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The Solicitors' Journal

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The Solicitors' Journal

VOL. LXXVI. **Saturday, December 10, 1932.** No. 50

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Current Topics.

Chancery Classics.

AMONG the volumes of the Chancery practitioner's library "Daniell's Chancery Practice" and the companion work, "Daniell's Chancery Forms," may well be said to have reached the rank of classics, not, indeed, that one would read them for what EDWARD FITZGERALD, the friend of THACKERAY and TENNYSON, called "human delight," but for the careful statements they contain regarding the procedure in the various kinds of actions which come within the jurisdiction of the Chancery Division. As often happens, however, with regard to books that have attained a distinct place in the lawyer's library, we know little of the author whose name is associated with them. EDMUND ROBERT DANIELL was called at the Middle Temple in the early part of the last century, and seems to have had interests outside, as well as within, the legal sphere, for he was a member of the Royal Society and appears to have acted as secretary for that body for a time. Some years after his call he brought out a volume of reports of cases determined on the equity side of the Court of Exchequer by Chief Baron RICHARDS, and then he seems to have set to work on the volumes which have perpetuated his name—the "Chancery Practice," the editorship, after the author was appointed a Commissioner in Bankruptcy, passing into other hands; but obviously a kind of goodwill attached to the name, and so each succeeding issue, although necessarily much altered, still bears DANIELL'S name on the title page. Not only in this country was the value of the work immediately recognised—it gained the like appreciation in the United States, where at that time no copyright restrictions prevented the reprint of English law books. Several of the eminent judges of America testified to the practical utility of the "Practice," one of them, Chief Justice TANEY of the Supreme Court, characterising it as "undoubtedly a very valuable book." Of the "Chancery Forms"—a new edition of which has just been issued, its preparation being among the last pieces of work of the late Sir CHARLES HULBERT, the very experienced Chief Master on the Chancery side—it would seem to have been an offshoot rather than an independent work of DANIELL; it was first published in 1868, under the editorship of LEONARD FIELD, EDWARD CLENNELL DUNNAND and JOHN BIDDLE, all of whom had been editorially concerned with successive issues of the "Practice." Among other names associated with both works, it is interesting to find that of Mr. UPJOHN, K.C., who brought out an edition of the "Forms" a year or two before he was called to the Bar.

The Landlord's Shadow Grows a Bit!

ONE or two of the proposals which have been put forward during the last ten days should bring some joy to the owners of property. First the Government's Rent Restrictions Bill should be of some assistance to the landlord in his fight against the confiscation of his property. A substantial number of houses will be de-controlled. But much more important are the provisions for recovery of possession on the ground that the tenant is subjecting the house to overcrowding, and to check sub-letting at excessive rents. It has long been one of the main complaints of owners that they were powerless to prevent overcrowding or to get possession of their property in order to prevent its becoming unfit for human habitation. Probably the Bill does not go as far as owners consider necessary, but if it does nothing but remedy the difficulty of overcrowding, it will be of great assistance to them. Again that part of the report of the Committee on Local Expenditure which deals with housing should give some encouragement to landlords. The committee acknowledge that slum clearance must go on and still requires subsidising, but they recommend that the subsidy for re-housing under the 1930 Act be halved, and this is likely to deter some authorities from ambitious and costly schemes. The committee also recognise the advantage of reconditioning houses and recommend that the policy be considerably extended. The recommended abolition of all further subsidies under the 1924 Act, which subsidies, as it proved, were useless to the private builder, and the proposal to entrust housing again to private enterprise, should also be welcomed. These things are as yet only proposals, but the landlord who has felt the harshness of the Housing Acts may see in them some justification for thinking that the tide is turning. And the new Housing (Financial Provisions) Bill provides for the abolition of the Minister's power to grant further subsidies under the 1923 and 1924 Acts, and for the guaranteeing of advances by building societies to their members for the purpose of building or acquiring houses to let to persons of the working classes.

Loan Conversion Profits.

A SHORT but important point of income-tax law was settled by the House of Lords in the case of *Westminster Bank, Limited* v. *Osler*, reported 76 SOL. J. 831. The principle underlying the decision is well established and was adopted in *Royal Insurance Company* v. *Stephens*, 14 Tax Cas. 22, where it was held that a loss sustained by the compulsory acceptance under the Railways Act, 1921, of stocks in the

amalgamated companies for stocks previously held in the companies which were absorbed could be deducted in making the return of profits. That case, as Lord BUCKMASTER pointed out in his judgment in the case under review, had not been questioned, and the Finance Act, 1931, had been drafted to exclude its application to future exchanges then contemplated. In the present case the bank had acquired during the war £7,505,000 5 per cent. National War Bonds of various issues. Under rights given by some of the bonds to exchange for longer term securities and an offer made by the Government relative to the others, the bank surrendered them and received in exchange £8,314,700 (nominal) 3½ per cent. Conversion Loan and £1,368,421 (nominal) 5 per cent. War Loan. These securities were, as the bank admitted, greater in value than the bonds by the sum of £141,750. In computing profits for income-tax purposes the bank did not bring into account any appreciation of securities except on actual sale, but the Crown contended that the war bonds had in fact been disposed of at the profit named, although there had been no sale, that the profit was part of the bank's business and was, in consequence, assessable to tax. The Commissioners for the Special Purposes of the Income Tax Acts adopted the same view, which was affirmed by decisions of ROWLATT, J., and the Court of Appeal (see 48 T.L.R. 211). The present appeal was dismissed by the House of Lords for the reasons stated in the judgment of Lord BUCKMASTER. The investment represented by the bonds came to an end when the new securities were taken in its place. There had been a realisation of the security, and it was immaterial that the transformation took place by the process of exchange. The bank was, therefore, assessable to income-tax on the sum above mentioned.

Remuneration for Magazine Articles.

AN interesting case reported in *The Times* and other daily newspapers in which a lady sued the proprietors of a well-known monthly magazine for the difference between what was paid her for an article and the amount she claimed to be entitled to, provides material for reflection on the part of aspirants to literary fame who submit articles to the editors of popular magazines. At the present time when it has become the practice for all sorts of people—distinguished and notorious alike—to contribute articles to the Press, it would seem to be desirable that there should be a clear understanding as to the rate of remuneration. In the case referred to, His Honour Judge TOBIN came to the conclusion that he had to decide what was reasonable and he awarded the plaintiff £3 10s., which was approximately half the balance she claimed over and above £9 she had received. The report of the case provides interesting reading if only by reason of the disclosure of the list of distinguished novelists and publicists who apparently contribute articles to magazines at the current rates allowed. Evidence was given by one well-known editor and two busy popular writers to the effect that, in the absence of a bargain to the contrary, the writer was only entitled to be paid at the current rates of the paper concerned. This would appear to be intelligible, and (quite apart from exceptional circumstances such as arose in this case), we should conclude that that is the true legal position, and that contributors who expect to receive a higher rate of remuneration should make a stipulation to that effect in advance.

The Rent and Mortgage Interest Restrictions (Amendment) Bill.

THOUGH it may be considered outside our province to criticise draft legislation, we feel that, on the principle that prevention is better than cure, we ought to draw attention to one technical defect in the above Bill. The First Schedule, setting out the grounds on which possession may be recovered without proof of the availability of alternative accommodation, repeats, in para. (*b*), the expression "convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose" at present contained in s. 4 (1) (*b*) of the Act of 1923, which replaced s. 5 (1) (*b*) of the principal Act. Anyone who doubts the difficulty of ascertaining the meaning of words specifying conviction of an offence unknown to the criminal law should glance at the judgments delivered in the Court of Appeal in *S. Schneiders & Sons, Ltd.* v. *Abrahams* [1925] 1 K.B. 301, C.A.; the opening sentences of Lord Justice SCRUTTON's judgment must contain more interrogation marks per inch than any other recorded judicial pronouncement. It is true that the Inter-departmental Committee which reported on this legislation last year came to the conclusion that the great number of legal decisions on the Acts had made most of the difficult questions "settled and understood"; but if this clause is re-enacted in its present form we can only echo Dr. JOHNSON's observation on the re-marriage of a widower whose first matrimonial venture had not proved a happy one: "the triumph of hope over experience."

Large Properties and Sterilisation.

THERE can be little doubt that, at the present time, the existence of a considerable number of large houses and properties, the owners of which are no longer able or willing to maintain them as private residences, constitutes an additional and an appreciable difficulty in the preparation of town-planning schemes. In more normal times it would be exceptional for such large houses not to remain in use as private residences. But in present circumstances more and more of these houses are being converted into flats, hotels, or even shops in those areas which are showing most signs of deterioration. It is not unnatural that local authorities should schedule what is still a good-class residential neighbourhood as an area to be reserved permanently for dwelling-houses only. But it is becoming increasingly doubtful whether such a policy will prove to be workable. A large number of the bigger private houses could be converted into flats or hotels and their value, provided that such conversion is permissible, is still high. But if conversion is forbidden the value of the property falls very considerably. The Minister will doubtless exercise a firm control over the enforcement of any such proposals in a scheme; but nevertheless it appears probable that authorities who impose restrictions of this kind will find themselves faced with large claims for compensation, in those few cases where compensation is not taken away by the scheme itself in respect of such injurious affection; and it is certain that, where compensation is taken away, owners will be subjected to very great hardship.

A New View of Property in Tithe.

AN article in the current issue of *The National Review*, by Viscount LYMINGTON, M.P., entitled "Tithe Rent-Charge—An Essay on Property" contains some highly-interesting comments on the position of tithe owners at the present time. Tracing out the history of the origin of tithes, Lord LYMINGTON claims that they were originally intended not only for the living of the clergy but also for the relief of the poor, the care of the sick, and the upkeep of local pathways. ELIZABETH's new poor law broke into this, but the tithe remained. The recipients of tithe, however, still "retained the onus of collecting tithe and shared in the prosperity of the countryside according to harvest and price." He then proceeds to show how the original payment in kind gave place to money payment—how agriculture has since declined and yet the tithe remains largely in the hands of laymen. "The money payment removed almost the last vestige of direct partnership with the land" which has been gradually and inevitably sacrificed to industrialism. The owners of tithe, in his view, should be made responsible for the performance of their duties and the original "cure" which tithes were created to meet should no longer be allowed to be a sinecure. Altogether a novel way of looking at the tithe question, which, coming from a Conservative Member of Parliament, is likely, we imagine, to cause some little stir in political circles, especially if the present tithe agitation continues.

Criminal Law and Practice.

THE CUSTODY OF JURORS IN CRIMINAL TRIALS.

In a case at assizes recently the observations of Humphreys, J., caused what was not extravagantly described as a "sensation." The learned judge was but making it clear in his own forceful way that it is in the highest degree improper, not to say worse, for anyone not formally in charge of the jury in a criminal case to speak to them or any one of them in connection with what has happened in court during the course of the trial.

The facts before the judge were simple. He had before him a prisoner at whose previous trial the jury had disagreed. Counsel informed the court that on that occasion, while the jury were considering their verdict, a police inspector, a specialist in finger-prints from Scotland Yard, had been allowed into the jury-room and there had explained to the jury in his own way some aspects of the finger-print system with special reference to the facts in the case which they were considering. Amongst other things, he had shown to them and had explained some finger-print apparatus.

Mr. Justice Humphreys, after making the fullest investigations and after interrogating those who might, at first sight, have appeared responsible for a grave irregularity, said: "It appears that in this case the officer in charge of the jury made a very unfortunate mistake. I acquit him entirely of having done anything which he believed to be wrong, but seeing that he had taken an oath not to allow any person to go into the jury-room, and in no event to speak to them himself except to ask them if they had considered their verdict, it was grossly improper on his part to allow a witness who had been examined and cross-examined, to go into the jury-room and demonstrate to the jury the value of the evidence which he had given." The learned judge went on to say that he also acquitted the police officer whose conduct had been called into question, and he added: ". . . That is not the way people are to be tried in this country, and I am perfectly horrified that anybody in the position of a bailiff who has sworn to look after the jury could for one moment think that the clerk of the peace, or any chairman of quarter sessions, would have allowed this to happen . . . I accept the view of the matter that the bailiff misunderstood what was said to him and the incident is now closed."

The practice that no one may communicate with the jury save for the purpose and at the time indicated by Humphreys, J., is very old. In ancient times, indeed, juries were treated very cavalierly by those representing the State. When the jury were retiring in *Lilbourne's Case*, 4 St. Trials (1649) 1404, the prisoner said: "I understand the officer that is to keep their door hath declared something of bitterness against me. I desire therefore that he may have some indifferent man joined with him to see I have fair play." The report says "which was granted and he sworn." This was a trial for treason against the commonwealth and when the same jury asked that they might be allowed a "cup of sack" each "for they had sat long," the request was refused, the court saying that such a thing was never allowed in cases of felony or treason. The jury were, however, allowed a light. The same rule is referred to in I Coke's Institutes, 227, and in many other reports, as being quite usual and proper. It was, however, abolished in 1870 by 33 & 34 Vict. c. 77, s. 23, which enacted that "Jurors, after being sworn, may, in the discretion of the judge, be allowed, at any time before giving their verdict, the use of a fire when out of court and be allowed reasonable refreshment, such refreshment to be procured at their own expense." When once the jury have left the court in order to consider their verdict they must not separate or leave the place appointed for them without the special permission of the court: *R.* v. *O'Connell*, I Cox 410; Co. Litt. 227 (b); 4 Bl. Comm. 360. In the case cited the judge allowed them, however, to go to church in the care of the sheriff. There was a doubt in that case also as to whether the verdict could be taken on the Sunday and, although the jury found it on that day, the judge would not receive it. It seems now to be accepted that a verdict may not be given on a Sunday, and where a trial for treason, treason felony or murder is adjourned because it cannot be concluded on the same day on which it began, the jury must be kept together during the night under the charge of the officers of the court: 60 & 61 Vict. c. 18, s. 1. Of course, the rule forbidding the separation of jurymen does not mean that under no circumstances must there be any actual physical separation: *R.* v. *Crippen* [1911] 1 K.B. 149.

So far we have been dealing with felonies. In misdemeanours, the practice has been otherwise, and the jury have been allowed to separate: see *R.* v. *Kinnear*, 2 B. & Ald. (1819) 462. The Juries Detention Act, 1897, now provides that on the trial of any felony, other than murder, treason or treason felony, the court may, at any time before the jury consider their verdict, permit them to separate " in the same way as the jury upon the trial of any person for misdemeanour are now permitted to separate."

The rule, however, to which Mr. Justice Humphreys has drawn attention, is absolute. While a jury is deliberating no person may communicate with them, not even an officer of the court, without the permission of the judge, and when a clerk of assize, sent to the jury by the judge to inquire if they were agreed upon their verdict, answered some questions put to him by them, the conviction was quashed: *R.* v. *Willmont*, 78 J.P. 352; (1914), 30 T.L.R. 499. If the jury require any assistance in coming to their verdict it must be given in open court in the presence of the accused.

The necessity of ensuring a fair and unbiased trial is so keenly observed that even where a juror, after his colleagues had intimated their desire to leave the court in order to deliberate, mistakenly separated himself from them and left the building, being absent for no more than a quarter of an hour, it was held on appeal that his action was an irregularity which rendered the proceedings abortive, and that a new trial before a different jury was necessary whether or no the irregularity had in fact prejudiced the accused: *R.* v. *Ketteridge* [1915] 1 K.B. 467, distinguished in *R.* v. *Twiss* [1918] 2 K.B. 853. In the latter case the irregularity in question took place before the summing-up and it was ascertained that the accused had not, in fact, been prejudiced. As the Court of Criminal Appeal does not lightly listen to complaint of such irregularities of jurors, nor will readily allow evidence to be called to prove instances of them, it should be well understood by all concerned, both for the prosecution and the defence, that the wisest course in every case is to assist the courts in preserving the complete indifference of the jury.

UNITED LAW SOCIETY.

A meeting of the Society was held in Middle Temple Common Room on 28th November. Mr. S. A. Redfern proposed: "That in the opinion of this House the case of *Oliver* v. *Birmingham and Midland Motor Omnibus Co. Ltd.* [1932] 48 T.L.R. 540, was wrongly decided." Mr. R. E. Ball opposed, and there also spoke Messrs. Halpin, Burke and Wood-Smith. The motion was carried by six votes to five (attendance, thirteen).

A meeting of the Society was held in Middle Temple Common Room on 5th December. Mr. J. H. Vine-Hall proposed: "That in the opinion of this House the sterilisation of the unfit should be made compulsory by law." Mr. F. R. McQuown opposed, and there also spoke Messrs. Jameson, Berrow, Burke, Everitt, and Redfern. The motion was carried by eleven votes to five (attendance seventeen).

The Annual Dinner of the Society will be held at the Café Monico on Monday, 12th December, at 7.15 for 7.30 p.m., the Rt. Hon. Lord Wright presiding.

Divorce for Insanity.

THE proposals contained in the Bill recently introduced by Mr. Holford Knight to amend the law relating to matrimonial causes, are very brief. Its object is to provide for the possible dissolution of marriage on the incurable insanity of one of the parties. To this end it is proposed to insert in s. 176 of the Supreme Court of Judicature (Consolidation) Act, 1925, which at present allows divorce (*a*) on the petition of the husband for the wife's adultery; and (*b*) on the latter's petition if the husband has been guilty of rape, sodomy, bestiality or (since 17th July, 1923) adultery, a new para. (*c*) to the effect that the marriage shall be dissolvable on the ground that the respondent (husband or wife) "is incurably insane and has been continuously a certified lunatic for a period of not less than five years immediately preceding the presentation of the petition." This is the substantial part of the Bill. The other amendment relates to s. 178 of the Act, which provides that the court shall not be bound to pronounce a decree where the petitioner has been guilty *inter alia* "of such wilful neglect or misconduct as has conduced to the adultery." To this it is proposed to add "or to the insanity as the case may be." At first sight these amendments might appear to be little more than a logical extension (in circumstances which must command universal sympathy) of the relaxation effected by existing enactments from the former rigour of the law. From the point of view of a petitioner, who desires to avail himself of the legal right to re-marry, this may be so; but this consideration is far from exhausting the realities of the situation and, indeed, does not touch upon one of its most fundamental aspects. Hitherto the law of this country has only contemplated severance of the marriage tie as a result of the deliberate fault of one of the parties. Offences, themselves criminal, or adultery have been conditions precedent to the granting of a petition for divorce. It is now suggested that loss of reason—a matter for which the respondent may be in no way responsible—shall constitute a ground for the same remedy. The new Bill introduces a new element which it would hardly be an exaggeration to describe as epoch-making. A great misfortune is placed upon the same footing as a deliberate act which—so far as the rights created by the marriage are concerned—goes to the root of the contract. We are not concerned here to approve or condemn the proposed change on general grounds, but it is important that the legal aspect of the matter should not be obscured by false sentiment to which a tragic situation—such as it is the aim of the Bill to remedy—is peculiarly apt to give rise. The second amendment would, indeed, confer upon the court a discretionary power to refuse relief in cases where the petitioner has conduced to the respondent's insanity, but this sensitiveness (if it may so be called) to the rights and wrongs of the position only serves to bring into higher relief the curious obtuseness evidenced by the proposal to punish (as the granting of the decree and the re-marriage of the petitioner must punish) the unfortunate respondent for no fault of his (or her) own. In view of what has been said, it will, perhaps, appear still more surprising that no attempt is made to overhaul the provisions of the existing Act with regard to alimony, maintenance, the settlement of a defaulting wife's property or the variation of ante- and post-nuptial settlements. The sections of the Act (ss. 190-192) which deal with these matters are, it is true, in terms discretionary, but the practice of the court is based upon the rights and wrongs of the situation considered in the light of the guilty party's responsibilities and would be wholly inappropriate to the position which would arise if insanity were made a ground for divorce. This confirms our view that the measure exhibits signs of undue haste and a lack of appreciation of the realities of the position to which it would give rise. If a change of the revolutionary nature contemplated by the Bill is to be made, the whole matter should be considered far more carefully than appears at present to have been the case. It is not one which can properly be dealt with by a couple of short amendments to an existing Act.

Civil Liability for Conspiracy.

THE general tendency of commercial development in recent times has been towards co-operation and amalgamation, by which means a present control little short of coercion and an ultimate monopoly are sought to be acquired. The activities of combinations such as trade unions, employers' federations, trade protection societies, and the like, are legion as the combinations themselves, and those activities are not infrequently attended with the infliction of damage upon others.

So far as concerns the activities of an individual, little difficulty arises, for the sole question in such a case is: Was the act complained of a tort? And the law on that head is fairly well settled.

"The first and obvious observation," said Lord Dunedin, in *Sorrell* v. *Smith* [1925] A.C., at p. 716, "is that, if a combination of persons do what if done by one would be a tort, an averment of conspiracy so far as founding a civil action is mere surplusage." On the other hand, is liability incurred by a combination of persons conspiring to do what may lawfully be done by an individual?

According to the early authorities, e.g., *Kearney* v. *Lloyd*, 26 I.R. 268, and *Huttley* v. *Simmons* [1898] 1 Q.B. 181, a conspiracy was actionable only where the acts agreed to be done, and in fact done, would have been actionable had they been without pre-concert. Modern decisions show, however, that liability may be incurred by a combination of persons doing what an individual may do with impunity.

The "famous trilogy of cases"—*Mogul Steamship Co.* v. *McGregor* (1889), 23 Q.B.D. 598, *Allen* v. *Flood* [1898] A.C. 1, and *Quinn* v. *Leathem* [1901] A.C. 495—forms the basis of the modern law as to actionable conspiracy.

The decision of the House of Lords in *Allen* v. *Flood*, *supra*, proceeded upon a jury's finding of fact, viz., the isolated act of a single defendant, without combination or conspiracy, of maliciously inducing the plaintiffs' employers to discharge the plaintiffs and not to employ them. The decision is clearly set out in the headnote, as follows:—"It is not actionable for a person to procure an employer to discharge or not to employ a workman when there is no question of conspiracy, intimidation, coercion or other illegal act on the part of the person so procuring, or of a breach of contract on the part of the employer; even although such procurement be malicious." Briefly, a lawful act done by one does not become unlawful if done with an intent to injure another. But the question whether a combination to injure be unlawful, where the intention by one is not, was expressly reserved, e.g., by Lord Macnaghten, at p. 153: "The decision of this case can have no bearing on any case which involves the element of oppressive combination."

By analogy to the right of an individual to dispose of his labour or capital as he wills, it may be asked: may not a partnership firm or a company do likewise? But the analogy is by no means complete. Thus, Lord Shand expressed the opinion in *Allen* v. *Flood*, *supra*, that while a combination of persons in pursuit of a trade object was lawful, although resulting in such injury to others as may be caused by legitimate competition in trade, yet combination for no such object, but in pursuit of a malicious design to injure another, would clearly be unlawful.

That opinion was confirmed by the House of Lords in *Quinn* v. *Leathem*, *supra*, in which case the acts of the defendants were described as "the outcome of a malicious but successful conspiracy to harm the plaintiff." That case clearly establishes the proposition that a combination or conspiracy to injure another is unlawful, even though the result, if attained by an individual, would have been lawful. On the other hand, the acts complained of in the *Mogul Case*, *supra*, were held by the House of Lords to be no cause of action, since they amounted to a justifiable measure of self-protection on the part of the defendant association in furtherance of its trade interests. But, as was pointed out in

Mackenzie v. *Iron Trades, etc.* (1910) S.C. at p. 82, even though the dominating motive in a course of action may be the furtherance of one's own business or interests, as those interests are conceived to be, one is not entitled to interfere with another man's method of gaining his living by illegal means, and illegal means may either be means that are illegal in themselves, or that become illegal because of conspiracy where they would not have been illegal if done by a single individual.

Serious doubts have frequently been expressed whether the element of combination was essential to a cause of action within *Quinn* v. *Leathem*, but in view of recent pronouncements by the Court of Appeal and by the House of Lords those doubts seem no longer tenable. Atkin, L.J., said in *Ware and De Freville* v. *Motor Trades Association* [1921] 3 K.B. at p. 91: "That it is the combination to injure that makes the act unlawful is so plainly laid down in *Quinn* v. *Leathem* that it seems to me, with respect, useless for judges who are bound by the decision of the House of Lords to suggest that the fact of combination in that case was only an incidental feature of the case and not the gist of the matter." The decision of the House of Lords in *Sorrell* v. *Smith, supra*, finally removed all room for doubt. In particular, the judgment of Lord Dunedin at p. 724 is very much in point: " . . . in an action against a set of persons in combination, a conspiracy to injure, followed by actual injury, will give a good cause of action, and motive or intent, when the act itself it not illegal, is of the essence of the conspiracy."

The proper basis of civil liability for conspiracy was indicated in the memorandum appended to the report of the Royal Commission on Trade Disputes, 1906, as follows: "Whether there can truly be a civil action of conspiracy on facts which fall short of criminal conspiracy cannot be said to be settled. We have carefully considered the matter, and our view is in the negative." In *Sorrell* v. *Smith, supra*, Lord Dunedin (who presided over the Commission in 1906) approves that opinion, and at pp. 724-726 explains how the mental element becomes material to the tort of conspiracy. "Now the moment that that is recognised—i.e., that the essence of conspiracy on which civil action is founded is a criminal conspiracy" (damage must, of course, be proved to sustain an action) "you at once bring in the spirit of the criminal law, where motive or intention—the *mens rea*—is everything; . . . and it is just the motive or intention, the *mens rea*, that makes the difference between a combination which is innocent, even although it inflicts damage, e.g., the *Mogul Case*, or a combination which, as it was based on *mens rea*, or a desire to injure, becomes a conspiracy, e.g., *Quinn* v. *Leathem*." His lordship adds that to say that a conspiracy to found a civil action must be a criminal, i.e., an indictable conspiracy, is not tantamount to saying that in each and every case a jury might be expected, if the case were tried in a criminal court, to return a verdict of guilty. In many cases they might and probably would think that the civil remedy was sufficient.

The question to be decided in each case is, not whether there is justification of what, without justification, would be an illegal action, but, whether there is any illegal action. Such illegal action may consist either of means which are illegal in themselves or of a conspiracy or combination to injure. If there be no illegal means and no conspiracy to injure, no action will lie.

Since the decision of the House of Lords in *Sorrell* v. *Smith, supra*, doubts have arisen as to *Ware and De Freville's Case* by reason of the refusal of the Court of Criminal Appeal to quash the conviction in *Rex* v. *Denyer* [1926] 2 K.B. 258; but more recently, Scrutton, L.J., has declared *Rex* v. *Denyer* to be bad law. It may be that this branch of the law is not so well settled as might have been inferred from the authorities immediately preceding, and including *Sorrell* v. *Smith*.

Ware and De Freville's Case, *Rex* v. *Denyer*, and *Hardie and Lane, Ltd.* v. *Chilton* (1928) 44 T.L.R. 470, involved a similar set of facts. The Motor Trade Association sought to fix the retail selling price of cars and to enforce obedience to those prices, not merely by prohibiting its members from dealing with recalcitrant traders, but by "blacklisting" such traders and threatening all other persons in the trade who dealt with persons on the "stop-list" that they would be put on the list themselves. The Association adopted the policy of offering, as an alternative to inclusion in the "stop-list," to accept a donation on behalf of some charitable institution.

In *Ware and De Freville's Case*, it was held that the steps so taken by the Association were a reasonable and legitimate means of protecting trade interests. In *Rex* v. *Denyer*, the alternative to inclusion in the stop-list was communicated by letter, and the prisoner, who was responsible for the communication, was convicted under the Larceny Act, 1916, s. 29 (1), of uttering a letter demanding money with meances, etc., without reasonable and probable cause. The Court of Criminal Appeal refused to quash the conviction and held that it did not follow that if the Association had the right to put the name of a person on the stop-list, it had also the right to demand money from him as the price of not doing so.

In *Hardie and Lane, Ltd.* v. *Chilton, supra*, the Court of Appeal followed its own decision in *Ware and Dr Freville's Case* and that of the House of Lords in *Sorrell* v. *Smith*. At p. 472, Scrutton, L.J., says: "Conspiracy as a cause of action exists either when the end aimed at by the agreement is unlawful and causes damage, or when the means by which a lawful end is pursued are unlawful and cause damage. An agreement is not actionable when neither the end nor the means are unlawful."

From *Sorrell* v. *Smith* it is clear that it is not actionable to threaten to do that which one may lawfully do. Lord Dunedin says, at p. 730: "Expressing the matter in my own words, I would say that a threat is a pre-intimation of proposed action of some sort. That action must be either *per se* a legal action or an illegal, i.e., a tortious action. If the threat used to effect some purpose is of the first kind, it gives no ground for legal proceeding; if of the second, it falls within the description of illegal means, and the right to sue of the person injured is established."

The Court of Criminal Appeal, however, in *Rex* v. *Denyer*, held that the means adopted by the Association, viz., the demanding of money, constituted a crime.

In his judgment in *Chilton's Case*, Scrutton, L.J., referring to s. 29 (1) of the Larceny Act, 1916, says, at p. 474: "On this I would remark that the language of the Statute shows that you may demand a valuable thing with menaces with reasonable and probable cause without committing any offence; and the most obvious reasonable and probable cause appears to me to be when you have a legal right to do the thing which you threaten to do, on the assumption that the obtaining of the valuable thing thereby does not involve any criminal act such as an agreement not to prosecute or not to inform the authorities of a felony." His lordship then proceeded to point out in unambiguous terms that in his opinion "the case of *Rex* v. *Denyer* was wrongly decided."

Shortly after the decision of the Court of Appeal in *Chilton's Case*, Lord Hewart, C.J., announced, in the Court of Criminal Appeal, that "for the purposes of the administration of the criminal law, unless and until the decision in *Rex* v. *Denyer* in this court is reversed by the only competent tribunal, it is binding upon and will be enforced by this court against any person or persons offending in like manner."

There can be little room for doubting that, unless and until the decisions in *Ware and De Freville's Case* and *Chilton's Case* are reversed by the only competent tribunal, those decisions will be followed in the Court of Appeal. There is, therefore, apparently a real divergence in the views of the civil and criminal courts, such that the point requires to be finally settled by the House of Lords. It may be that Scrutton, L.J.'s, dicta are too sweeping, but it is submitted that *Chilton's Case* was rightly decided in accordance with unquestionably binding authority.

An Old Sale.

THE scene in the auction room in Mr. Galsworthy's *Skin Game* may perhaps be taken to hit off the average non-technical attitude towards the elaborate provisions found in modern conditions of sale. There, it may be remembered, provisions which the lawyer knows, and the audience instinctively realises, to be vital are recited in a rapid monotone—all but inaudible but for the words "one," "two," "three," etc., as each new clause is reached. We desire to express our indebtedness to a subscriber for the particulars and conditions, reproduced below, of a sale fixed to take place nearly 150 years ago, which, in addition to their antiquarian interest, are illustrative of an early attempt to grapple with the realities of the situation—often a very delicate one—created by the relationship of vendor and purchaser. The main features of the contract appear to be already firmly outlined. Indeed, the simplicity with which the basic issues are treated will probably be viewed by the modern lawyer accustomed to the intricacies of present day documents of similar import with admiration.

* * * *

Freehold, Epſom.

THE

PARTICULARS,

AND

CONDITIONS OF SALE,

OF A

Freehold Dwelling Houſe & Garden,

SITUATE

In *New Inn Lane*, at *Epſom*, in *Surrey*;

Which will be SOLD by AUCTION,

By Mr. *BURTON*,

on THURSDAY, the 15th of MAY, 1788,

At Twelve o'Clock,

At the BANK *Coffee-Houſe*, CORNHILL,

THE PREMISES CONSIST OF

A Large and very extenfive Dwelling Houſe, with Five Upper Rooms, Five Bed-Chambers, a lofty Staircafe, Hall, Four Breakfaft or Dining Parlours, China Clofets, a large Kitchen, Butler's Pantry, Back Staircafe to four other Rooms, and Cellaring: Alfo a Brick Dwelling Houſe with Four Rooms, and a Piece of Garden Ground; together with Stabling for Eighteen Horſes, and open Court Yard.

The Premiſes are 60 Feet by 190, little more or leſs, have been in the Occupation of Mr. MORRIS, for a Term of Years, at the Rent of only 20l. per Annum.

May be viewed till the Sale, (Sunday excepted.)

Particulars may be had at the Plough, Clapham; the King's Head, Dorking; the Place of Sale, and of Mr. Burton, Auctioneer and Undertaker, No. 128, Houndſditch.

CONDITIONS OF SALE.

1ſt. THE higheſt Bidder to be the Purchaſer, and if any Diſpute ariſe between two or more Bidders, the Premiſes to be put up again.

2d. No Perſon to advance leſs than 5l. at each Bidding.

3d. The Purchaſer ſhall pay down immediately a Depoſit of Twenty Pounds per Cent. in Part of the Purchaſe-Money, and ſign an Agreement for Payment of the Remainder on or before the 7th of June, 1788, on having a good Title.

4th. The Purchaſer ſhall have a proper Conveyance of the Premiſes, at his own Expence, on Payment of the Remainder of the Purchaſe-Money according to the 3d Condition; and to be entitled to the Rent and Profits from Lady-day 1788, to which Time all Outgoings will be cleared.

5th. There being a Duty on all Sales of Eſtates, &c. of Three-pence Halfpenny in the Pound, to be levied on the Buyers or Sellers, as may be thought moſt proper; the Premiſes compriſed in this Particular are to be ſold, ſubject to the Seller paying one Moiety of the ſaid Tax and the Buyer the other, excluſive of the Sum the ſaid Premiſes ſhall fell for.

Laſtly. If the Purchaſer neglects or fails to comply with the above Conditions the Depoſit-Money to be forfeited, the Proprietor ſhall be at full Liberty to reſell the ſaid Premiſes, and the Deficiency, if any there be by ſuch ſecond Sale, together with all Charges attending the ſame, ſhall be made good by the Defaulter at this preſent Sale.

Company Law and Practice.

CLIX.

THE STATUTORY PROVISIONS GOVERNING THE NAME OF A COMPANY.

ONE of the most important things to bear in mind, in connection with the incorporation of a new company, is that the proposed name of the company must comply in all respects with the provisions of the Companies Act, 1929, concerning the names of companies. The appropriate section of that Act, and of the various Acts which it replaces, have proved so fruitful a source of litigation, that it may be well to review their provisions in some detail in these columns.

First of all, it is essential that the names of all companies, with the exceptions which we shall notice later, should contain the word "limited." If any person or persons trade or carry on business under any name or title of which the word "limited," or any contraction or imitation of it, is the last word, s. 364 imposes a penalty in the nature of a fine not exceeding £5 for every day upon which that name has been used, unless those persons have been duly incorporated with limited liability. In the case of foreign and colonial companies issuing prospectuses inviting subscriptions for shares in this country, if the liability of the members of the company is limited, it is necessary that the fact should be clearly stated upon all prospectuses and other official documents and publications of the company in Great Britain (s. 348).

Before considering the important provisions of s. 17 it will be convenient to mention here the exemptions from the necessity to include the word "limited" as part of the company's name which are provided for by s. 18. The effect of that section is that, where those about to incorporate a new company are able to prove to the satisfaction of the Board of Trade that the objects of the company are to promote commerce, art, science, religion, charity, or any other useful object, and that the income of the company will be devoted solely to those objects, the Board of Trade may by licence dispense with the word "limited." The promotion of one or other of those objects need not necessarily be the sole object of the company, but it must be the main and chief object: *Institute of Civil Engineers*, 15 A.C. 334. This case, upon provisions of an analogous kind contained in the Customs and Inland Revenue Act, 1885, establishes the principle that "science" in this connection is not confined to pure or speculative science, or science generally, but includes various branches of science. The House of Lords held that the property of the institute was applied substantially for the promotion of mechanical and engineering science, and not merely for the promotion of the professional interest or advantage of the members.

It is essential, however, that the company should prohibit the payment of any dividend to its members, as the section affects those associations exclusively which are not formed for profit. The licence which is granted by the Board of Trade may be granted on any conditions and subject to any regulations it thinks fit, and the Board of Trade may require that the conditions and regulations upon which it issues the licence shall be included in the memorandum and articles of the company, or either of such documents. In practice these regulations and conditions are somewhat elaborate and stringent, particularly as regards the prohibition on the distribution of income against the members of the company, and they cannot be altered.

In *Re Society for Promoting Employment of Women* (1927), W.N. 145, the society's memorandum contained a provision that the income of the society was to be applied solely to promote the objects of the society as therein set forth, and that if it was otherwise applied that the liability of the members should thereupon become unlimited. The society wished to alter its memorandum and to dispense with this provision, and obtained the permission of the Board of Trade.

On an application to the court for its sanction to the alteration, Russell, J., held that the court had no jurisdiction to sanction an alteration which included the deletion of such a provision. This case has, however, been recently distinguished by the Court of Appeal in *Re Scientific Poultry Breeders Association Ltd.* [1932] W.N. 223 (76 SOL. J. 798). The application to the Board of Trade to dispense with the word " limited " had not succeeded, but the memorandum prohibited the payment of any remuneration to, or the division of any profits among, the members of the governing body. Owing to a large increase in the business and membership of the association, it was found necessary that the members of the governing body should be remunerated in view of the increased demands upon their time involved by the extra work to be done in connection with the association. The association petitioned the court for its sanction to an alteration to the memorandum allowing such remuneration to be paid. Eve, J., held that the proposed alterations were wholly inconsistent with the objects of the association, and refused his sanction. The Court of Appeal, however, allowing the appeal, held that the effect of the proposed alterations was, while maintaining the main object of the association, namely, the improvement of the poultry industry, to add something ancillary to that object, namely, a better method of carrying that object into operation.

When registered, an association registered under this section enjoys all the privileges of a limited company, and is subject to all its obligations except those of using the word " limited " as part of its name, and of publishing its name in the manner provided for by s. 93, and of sending lists of its members to the registrar of companies in accordance with the provisions of ss. 108 and 110. These exemptions continue until the Board of Trade revokes the licence, and the registrar thereupon has to enter the word " limited " at the end of the association's name in the register. Before revoking the licence the Board of Trade must give the association notice of its intention so to do, and give it an opportunity of opposing the revocation. If an association which has been granted a licence under this section by the Board of Trade desires to alter its memorandum for the purpose of extending its objects, the permission of the Board of Trade should be obtained before applying for the sanction of the court: see *St. Hilda's College* [1901] 1 Ch. 556.

A company may under s. 19 change its name, but it can do so only with the approval of the Board of Trade signified in writing, and a special resolution is required to effect it. When the change is made the registrar enters the new name on the register, and issues an altered certificate of incorporation, and until these two things have been done the change of name is not effective. The change does not affect any rights or obligations of the company, nor does it render defective any legal proceedings by or against the company under its old name. Sub-section (2) of this section provides that if a company through inadvertence or otherwise is, without the consent required under s. 17 (1) (*a*), registered with a name so closely resembling another company as to be calculated to deceive, the first-mentioned company may change its name with the sanction of the registrar.

Turning now to s. 17, to which we have referred above, we find that there are three cases in which names cannot be registered at all. First and foremost is the provision of sub-s. (1) (*a*) that a company cannot be registered with a name identical with that by which a company already in existence is registered, or with a name so closely resembling it as to be calculated to deceive, unless that company is about to be dissolved, and has signified its consent in such manner as the registrar requires. If the name is identical with that of an existing company it does not matter how different the objects of the two companies may be, or that they carry on their undertakings in different corners of the world, the name cannot be registered. The mere fact that one of the principal names of the two companies is the same does not matter, so long as the whole name is distinct and the business different: see *Dunlop Pneumatic Tyre Co.* v. *Dunlop Motor Co.* [1907] A.C. 430. This sub-section only applies where the company is taking the name of another company already registered, and not where it is taking the name, or a name closely resembling the name, of an old firm or company which is not registered. Once the name is registered the section ceases to apply, but any firm or company may bring an action for an injunction to restrain the company from carrying on business under a name which is calculated to deceive or to cause confusion. Before the name is registered another company or firm may obtain an injunction, not under the section, but under the general law, restraining the registration of the name if it is calculated to deceive the public. It has been suggested that the registrar has a discretion in accepting or rejecting a name, but apart from a dictum of Avory, J., in *R.* v. *Registrar of Companies* [1912] 3 K.B. 23, there is no express authority for this proposition. In order to succeed in an action to restrain registration, or to restrain a company which has been registered with a particular name from continuing to carry on under that name, the plaintiff has either to show fraud, the intention to deceive, or to make out a case for confusion. He will be able to do the latter if he can prove that the similarity between the names is affecting his property by diverting customers from himself to the company, which has taken his name, or that his own goodwill or credit has been adversely affected. The body of authority on this point is very considerable, and the distinctions between the cases in many instances somewhat fine, but in each case it is the question of fact, whether or not confusion has arisen, which must necessarily determine the issue.

Secondly, s. 17 (1) forbids the registration of a name containing the words " Chamber of Commerce," unless the company is an association not for profit which has received a licence from the Board of Trade under the provisions of s. 18, which we have already noticed, to dispense with the word " limited " as part of its name. Thirdly, no company may use the words " Building Society " as part of its name.

Sub-section (2) of the section forbids the use, without the consent of the Board of Trade, of the words " Royal " or " Imperial " or any other words which, in the opinion of the registrar, are calculated to suggest that the company is under royal patronage or is connected in any way with a government department. A further prohibition is extended by the section to the use of the words " Municipal " or " Chartered," and no name may include the description " Co-operative."

A Conveyancer's Diary.

Searches in Bankruptcy by Personal Representatives and Trustees when Making a Division.

MY " Diary " of the 29th October has brought some correspondence to which I ought to refer.

First, there is a letter from Mr. John W. Grey, published in our issue for the 12th November (76 SOL. J. 800). In that letter Mr. Grey expresses surprise that I made no reference to the T.A., 1925, s. 27 (2) (*b*), which he says " Shows conclusively that personal representatives and trustees should make searches on a division," and he adds that " in practice these searches are rarely made."

It would have been better if I had mentioned this enactment, and I am obliged to Mr. Grey for calling attention to the omission. At the same time I am not sure that it is so conclusive as our correspondent states.

It will be remembered that s. 27 is that which is intended to protect trustees or personal representatives by means of advertisements.

Sub-section (1) provides that " with a view to the conveyance to or distribution among the persons entitled to any real or personal property the trustees of a settlement or of a

disposition on trust for sale may give notice by advertisement . . . requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice . . . particulars of his claim in respect of the property or any part thereof to which the notice relates."

Sub-section (2) enacts in effect, that at the expiration of the time fixed by the notice, the trustees or personal representatives may proceed to a distribution, having regard only to the claims of which they have notice, and shall not be liable to any person of whose claim they have not had notice. The sub-section proceeds "but nothing in this section . . . (*b*) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to these which an intending purchaser would be advised to make or obtain."

That goes no further than to say that when a purchaser should search, trustees or personal representatives are not relieved *by that section* from doing so. That is, that the advertisement mentioned in sub-s. (1) does not relieve trustees or personal representatives from making searches which otherwise they would be advised to make. It is hardly an authority for the proposition that searches in bankruptcy ought to be made. Of course in my opinion such searches ought to be made.

Then there is an interesting letter published last week, from Mr. R. H. Behrend who gives us the benefit of a memorandum by one of his managing clerks as to his practice on this point. In town, he says, he searches in the bankruptcy petition book and does not trouble about receiving orders. If he finds that there is an outstanding bankruptcy notice or petition he would advise withholding payment. In the country he says that the position is most unsatisfactory, as the particular registry may not be known and even then may not be within reach of a London solicitor on the exact day of payment, except by asking the district registrar to make the search and telegraph the result.

In our correspondent's office, therefore, everything possible seems to be done, but even then there can be no certainty of protection. It will often happen that bankruptcy proceedings might properly be taken and a receiving order made in London or in one of several bankruptcy districts, and so a search in all of them would be required. Further, it is provided by s. 98 (3) of the B.A., 1914, that a proceeding shall not be invalidated by reason of its being taken in the wrong court, which increases the difficulty.

I am grateful to Mr. Behrend for his practical contribution to our consideration of this subject.

Lastly, there is a letter, which also appeared last week, from my learned friend Mr. Walter Banks, the Editor of the 13th ed. of "Lewin on Trusts."

Mr. Banks takes exception to my statement that the question about which I was writing was not referred to in "Lewin," and he says that it is dealt with at considerable length. Mr. Banks proceeds: "The view is there expressed that as regards equitable interests the Bankruptcy Act can pass nothing more than the fullest assignment which the bankrupt could have made and that a trustee in bankruptcy who is an assignee by operation of law cannot in a court of equity be viewed as under a less obligation to give notice than a particular assignee. The title of a trustee in bankruptcy being a derivative one, and not one that appears upon the face of the instrument creating the settlement, the trustee may, having neither express nor constructive notice, pay upon the footing of the original title, and in that case they cannot be made to pay over again to the trustee in bankruptcy under the derivative title. But it would seem that the rule as to notice cannot be applied as against a trustee in bankruptcy where the subject-matter of assignment is a debt which was recoverable *at law* by the bankrupt, since in that case the *legal title* vests in the trustee in bankruptcy."

I have looked at the passages in "Lewin" to which Mr. Banks alludes and the authorities there cited, and do not think that they really hit the point which I was discussing.

I cannot refer to all the authorities there mentioned, but I may shortly state the effect of some which seem to be the most pertinent.

First there is *Re Russell's Policy Trusts* (1872) 15 Eq. 26. In that case a policy effected by A on his life was mortgaged in 1860 without notice to the office. A became bankrupt in 1862 and in 1868 joined in a transfer of the mortgage to B, who had no notice of the bankruptcy. B gave notice to the office, and subsequently notice of the bankruptcy was given. It was held that B's notice being first, he had priority over the assignee in bankruptcy.

That is to say, that as between competing assignees the rule in *Dearle* v. *Hall* applies, although one of them is a trustee in bankruptcy, and, as Mr. Banks says, an assignee by operation of law.

Another case is *Palmer* v. *Locke* (1881) 18 Ch.D. 381. There a legatee of a reversionary interest under a will, which had been paid into court in an administration action, presented a petition for liquidation in March 1873, and a trustee was appointed. In July he assigned his interest in the legacy to J, who obtained a stop order on the fund in court. In November, 1876, he assigned his interest to E, without notice of the liquidation, who also obtained a stop order. Afterwards the trustee in the liquidation obtained a stop order. The plaintiffs in the action purchased the interest of J and of the trustee in the liquidation and contracted to sell the legacy to the defendant who objected to the title on the ground that E's mortgage was an encumbrance and required it to be paid off. It was held that E having obtained a stop order before the trustee in the liquidation, his interest was prior to that of the trustee and was an encumbrance on the estate.

Here again the question was one of priorities between assignees and the rule in *Dearle* v. *Hall* was applied.

Re Stone's Will [1893] W.N. 50, was a similar case. E, a bankrupt, was entitled to a reversionary interest under a will and assigned it to T, who had no notice of the bankruptcy. T gave notice to the trustees of the will and subsequently upon the fund being paid into court obtained a stop order. The trustee in E's bankruptcy who being unaware of the bankrupt's interest had neither given notice to the trustees of the will nor obtained a stop order, claimed payment out to him of the fund. It was held (following *Palmer* v. *Locke*) that E had priority over the trustee in bankruptcy.

It will be seen that these authorities turn upon the question of priorities between assignees, and show that the rule in *Dearle* v. *Hall* applies where one of the assignees is a trustee in bankruptcy.

My suggestion is that these and other cases referred to in "Lewin" do not cover the question as to a payment to the bankrupt himself. The property, both legal and equitable, of a bankrupt, is vested by statute in his trustee in bankruptcy, and a payment or transfer to the bankrupt, unless made before the date of the receiving order, is not protected by s. 45 of the Act. Having regard to these statutory provisions, I cannot see how the bankrupt is in a position to give a discharge for any payment or transfer not made before that date. *Re Wiggell* [1921] 2 K.B. 835, seems to me to be a conclusive authority to that effect. It is true that in that case the bankrupt had a legal title to the property in question, but I have found no judicial decision which draws a distinction between legal and equitable interests when there is payment or transfer to the bankrupt himself on or after the date of the receiving order.

It may be that when the question comes to be decided the court will hold that the view taken by Mr. Banks (which I need hardly say is entitled to the greatest respect) is the correct one, but as things stand at present, I think that such searches as can be made ought to be made although, however diligently made, no absolute protection can be assured.

Landlord and Tenant Notebook.

The Discretion in Forfeiture Cases.

WHENEVER Parliament confers a judicial discretion, it creates a demand for a statement of principles, and sooner or later an effort is made to satisfy the demand. The discretion to grant or refuse relief against forfeiture, created by the Conveyancing Act, 1881 (now L.P.A., 1925, s. 146 (2)), has been characterised as wider than that assumed by the Courts of Equity. The best known attempt to formulate principles on which it should be exercised is that made by Cozens-Hardy, M.R., in *Rose* v. *Spicer* [1911] 2 K.B. 234, at p. 241. The learned Master of the Rolls, after remarking, in effect, that he was aware of the dangerous course on which he was embarking, but considered that expedience made the risk worth while, said: "In the first place the applicant must, as far as possible, remedy the breaches alleged in the notice and pay reasonable compensation for the breaches which cannot be remedied. In the second place, if the breach is of a negative covenant, such as not to carry on a particular business on the demised premises, the applicant must undertake to observe the covenant in future, or at least must not avow any intention to repeat the breach complained of. In the third place, if the act complained of, though not a breach of a negative covenant, is of such a nature that a court would have restrained it during the currency of the lease on the ground of waste, the applicant must undertake to make good the waste if it is possible to do so. In the fourth place, if the act complained of does not fall under either the second or third head, but is one in respect of which damages, other than nominal, might be recovered in an action on the covenant, the applicant must undertake not to repeat the wrongful act or to be guilty of a continuing breach."

"In short, subject only to the maxim *de minimis*, the applicant must come into the court with clean hands, and ought not to be relieved if he avows an intention to continue or to repeat a breach of covenant."

If I may venture to criticise the attempt in point of form, I would submit that the use of the expressions "In the first place," "In the second place," etc., is, perhaps, a little misleading, in that it suggests that every applicant has to pass four tests, while on analysis, it appears that only two qualifications are required, for the last three conditions are mutually exclusive. The first of these three relates to breach of a negative covenant, the second to cases in which no covenant has been broken (though a proviso for re-entry on the commission of waste, without any covenant, must be rare), and the third, by elimination, to breach of a positive covenant. The summary in the second paragraph, however, gives one an excellent idea of the material burdens to be borne and the correct attitude to be struck by the applicant, and emphasises the fact that more is expected of him than that he should wear a white sheet.

In point of substance, the attempt was speedily criticised by Lord Loreburn, L.C., when delivering the judgment of the House of Lords which reversed that of the Court of Appeal. (The case is reported *sub nomine Hyman* v. *Rose* [1912] A.C. 623.) The ground on which the judgment of the court below was set aside had to do with the question whether the covenants had been broken and not with the exercise of the discretion, but Lord Loreburn said, p. 631, that the maxims laid down were useful in general but that it was not advisable to lay down general rules. "It ought to be distinctly understood that there may be cases in which any or all of them may be disregarded."

It is not surprising that no reference to these principles has since appeared in our law reports, though doubtless both judgments have been much cited in unreported cases. A decision worth noting, however, because it at the same time deals with another discretionary matter, that of costs, is *Associated Omnibus Co. Ltd.* v. *Idris* (1919), 148 L.T.Jo. 151. There were two applicants for relief: the original tenants, a company which had gone into liquidation in order to sell its business to another company, and the purchasing company, who were second plaintiffs. The cause of forfeiture was the liquidation—an eventuality not covered by Cozens-Hardy, M.R.'s strictures, as it was neither a breach of covenant nor waste. When, in accordance with a covenant against alienation, the first defendants innocently applied for licences (there were two leases) to assign, the landlords replied with a demand for possession. What happened next is not quite clear from the statement of facts in the report; but at some time, as is implied in the summary of the judgment, the defendants altered their position so that the plaintiffs had to commence the action; the defendants at all events asked that the purchasing company should enter into direct covenants with them as a condition of relief; this the court refused, as no loss was being suffered by them; and on the question of costs, the learned judge directed that each party should pay his own.

In the recent Northern Irish case of *McIlvenny* v. *McKeever* [1931] N.I. 161, C.A., which I had occasion to discuss in connection with notice and waiver (Vol. 76, p. 656; 24th Sept. last), a good deal was said about the principles suggested by Cozens-Hardy, M.R. The short facts were that the plaintiff sought to re-enter for breaches of covenant to use the premises as a spirit grocery, etc., and to maintain the necessary licences, and that compliance had become impossible owing to changes in the licensing laws. By virtue of the same changes the tenant had become entitled to compensation and had been awarded £1,621; the plaintiff had not applied for compensation, but in the action the jury awarded him £237 10s. damages, and the Lord Chief Justice refused to grant the tenant relief. In the Court of Appeal, Andrews, L.J., was "not prepared to dissent from" his brethren, who were in favour of allowing relief on condition that damages and costs be paid within a month; he considered, however, that it was difficult to reconcile this attitude with the principles of *Rose* v. *Spicer* and *Hyman* v. *Rose*, the covenant being a continuing one. Best, L.J., based his judgment on the principle that the courts leaned against forfeiture, and the facts that the lessor had lain by for six years and that the covenant as to user could no longer legally be observed. Brown, J., was most explicit on the point. He observed that the plaintiff lessor had invoked both *Rose* v. *Spicer* and *Hyman* v. *Rose*, but he considered this was one of the cases in which "any or all" of the principles were to be disregarded. He then examined the respective positions of the parties; the plaintiff's interest was originally security for rent and the goodwill of a spirit-grocery; he had lost the latter, but been awarded £237 10s.; the fabric of the premises was a good security for the rent. This judgment accords well with another part of Lord Loreburn's, in which the learned lord chancellor expressed the opinion that the Act aimed at "preventing one man from forfeiting what *in fair dealing* belongs to someone else."

Our County Court Letter.

THE WIDTH OF RIGHTS OF WAY.

THE extent of the *via trita* has been considered in two recent cases. In *English* v. *Williams*, at Bristol County Court, the plaintiff (a fruit grower) was entitled to a right of way from certain cottages to a well in a field owned by the defendant. The latter had interfered with the right of way by digging up the surface, and reducing the width so that carts could not pass. The plaintiff's evidence was that a carriage-way had existed for years, but that the path had recently become narrower. The defendant denied having cut away any of the path (which had always been too narrow for vehicles), and he contended that he was not liable for any gradual change in the nature of the path. His Honour Judge Parsons, K.C., held

that: (*a*) the right of way was intended, not only for foot passengers, but also for carriage traffic; (*b*) the plaintiff was therefore entitled to a width of nine feet, and judgment was given for £5 damages and an injunction, with costs.

In *Donkin* v. *Woodward*, at Stratford-on-Avon County Court, the plaintiff claimed £10 as damages for trespass, viz., £8 in respect of a hedge and £2 in respect of a grass verge, which had been denuded of foliage by the passage of the defendant's cows over a public right of way. The plaintiff's case was that (*a*) he had bought the property in 1926, when there was a twenty years' growth of privet hedge; (2) this (since March, 1932) had been worn back to the iron railings. The defence was that the hedge was originally behind the iron railings, but had gradually encroached about two feet over the right of way. His Honour Judge Drucquer held that: (*a*) the right of way originally extended to the iron railings, the hedge being a mere ornament; (*b*) the defendant was therefore not liable for the damage, although he was not so careful as his predecessors in driving cows. Judgment was therefore given for the defendant, with costs, in accordance with *Turner* v. *Ringwood Highway Board* (1870), L.R. 9 Eq. 418. It was there held that: (1) wayside strips (even if overgrown) are not thereby abandoned; and (2) the adjoining landowner cannot prevent the cutting down of trees, even if they are thirty years old.

PERSONAL LIABILITY OF RECEIVER.

The above subject was recently considered at Manchester County Court, in *Robinson's Carlton Brewery Limited* v. *Nicholas*, on a claim of £30 15s. for goods supplied to the defendant, who was receiver and manager of Wineshops (1926) Limited. The plaintiffs contended that, although the orders indicated that the defendant was receiver and manager, there was no statement that he was acting on behalf of the company, and therefore he was personally liable. The defendant's case was that every document showed that he was acting as agent for the company, and His Honour Judge Leigh held that: (*a*) the orders were given by the company, whose name was upon the documents; (*b*) the defendant had added his name to show that, as receiver and manager, he had authorised the issue of the company's order. Judgment was therefore given for the defendant, with costs, in accordance with *Cully* v. *Parsons* [1923] 2 Ch. 512, in which the cases hereon were reviewed.

THE RIGHTS AND LIABILITIES OF JOURNALISTS.

In the recent case of *Hyne* v. *Yorkshire Conservative Newspaper Co. Ltd.* at Leeds County Court, the plaintiff claimed £26 5s. as the price of an article (written at the request of the defendants) entitled "Railway Camping Coaches." The defendants contended that the article, when submitted, was marked "Price for first British Serial use in the *Yorkshire Post*, 25 guineas," and their case was that (*a*) in the original agreement no price was mentioned; (*b*) the reservation of serial rights was an introduction of fresh terms; (*c*) a fair and reasonable price was five guineas. His Honour Judge Woodcock, K.C., held that the introduction of fresh terms entitled the defendants to refuse the article, and judgment was therefore given in their favour, with costs.

A question of liability for printing, on a change in proprietorship of a magazine, was recently considered at Westminster County Court in *Kingston and Staines Press Limited* v. *Tilby*. The claim was for £53 as the cost of printing the *Saturday Review* for the 14th May, as the old proprietors (the Saturday Review Newspapers Limited) had disposed of the journal on the 11th May to the Chawton Publishing Co. Limited. The defendant, who was also the editor, had stopped payment of his cheque for the above amount, on finding that the new owners had also sent a cheque for £55. The plaintiffs contended that the latter cheque was in respect of the following week's issue (which was then in type), and, as His Honour Judge Turner upheld this contention, judgment was given for the plaintiffs for the amount claimed, with costs.

Correspondence.

Divorce for Desertion.

Sir,—In reference to the Matrimonial Clauses Bill, which is shortly to be introduced, we note that one suggested ground for divorce shall be "three years' desertion." Can you say whether it is proposed to make any provision for the many married couples who are living separate and apart, and have done for years past, under a separation deed? If not, we certainly consider that provision should be made to include such persons, and that relief should be given after, say, three or five years' separation. To our knowledge there are cases where great hardship is being caused. We think you will agree that it is a most unsatisfactory state of affairs that a person who is living apart under such a deed is forced to either commit misconduct before the other party will release him or her by taking action for divorce, or drift on for years, when there is absolutely no likelihood of their coming together again, or, which is a greater evil, when the other party, to the deed will not take action, to live in adultery. We do think this is a matter which should be brought forward.

W. A. & H. M. Foster & Co.

Wolverhampton.
6th December.

[The Bill referred to by our subscribers is now in print, and copies are available at H.M. Stationery Office. It is to be observed that it relates to divorce for insanity only.—Ed., *Sol. J.*]

"*Sans frais*" and "*Sans retard.*"

Sir,—I was reading to-day your interesting article in your issue of 8th October, on "Privity of Contract between Principal and Sub-Agent," and was interested to find the phrases "*sans frais*" and "*sans retard*," and if you look at p. 247 of the last edition of "Byles" you will see a note:—

"(x) Whether the French terms '*retour sans protêt*' or '*sans frais*,' stated in earlier editions of this book to be in use in this country, are still so, may now be doubtful . . ."

Perhaps you will have an illuminating summary as to whether you agree with what I cite from "Byles."

See also the last paragraph of p. 46 of "Chalmers."

E. T. Hargraves.

Coleman-street, E.C.2.
4th November.

[We are obliged to our correspondent for his letter. The phrases mentioned are, we believe, still frequently used in the export trade. So far as the *Calico Printers Association Case* is concerned it may be interesting to observe that: (1) it was recently before the courts, and (2) the transaction was between an English company and a foreign customer. We shall, however, be grateful to any of our readers who are able to enlighten us on this matter.—Ed., *Sol. J.*]

Appeals from Sentences by Magistrates.

Sir,—*Apropos* your note under this head in "Current Topics" of your issue of 26th November, a committee is sitting to consider the alteration of the existing statutory requirements as to appeals from Courts of Summary Jurisdiction, and the Home Office has asked for and received suggestions from (amongst others) the societies representing respectively county and city and borough clerks of the peace.

26th November. Borough C.P.

VALUATION OF THE CITY.

The new total gross value of the City of London, which, subject to appeal, will come into force on 6th April, 1933, is £11,165,410 and the rateable value £8,897,046. The rateable value of the Inner Temple is £23,905 and the Middle Temple, £17,889. There is a combined increase of £153,745 gross value and £129,586 rateable value.

POINTS IN PRACTICE

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Nomination of Governing Director.

Q. 2620. A clause in the articles of association of a private limited liability company runs as follows: "The said X shall be sole governing director (with power to appoint by deed or will his son or other person to be governing director in his place) and he shall hold the said office until either he dies, resigns or becomes of unsound mind . . ." X now wishes to appoint that his son shall be governing Director in his place either on his death or resignation. Can he do so by deed, and will the deed be irrevocable unless expressly declared to be revocable, and what form is suggested? Is s. 151 of the Companies Act, 1929, applicable, as it may be the appointment made by any deed will take effect at a future date and this may not be an "appointment" of office as a director.

A. X can appoint his son by a deed in the following form:—

"The Co. Limited.

"I, X, of sole governing director of the above-named company, do hereby appoint my son of to be governing director in my place in pursuance of Article and I hereby declare that the aforesaid appointment of my son shall take effect upon my death or prior resignation unless previously revoked by me.

"Dated 1932.

"(Signed)."

As the power of appointment by will exists side by side with the power to appoint by deed, there is no ground for contending that X is *functus officio* once he has made an appointment. An appointment by deed might even be revoked by will, or *vice versa*, and care should be taken that no problem of this sort arises by any oversight. The deed would therefore be revocable in any case, but the above form expressly reserves the right of revocation. The above will not be an "assignment" of office as a director within the Companies Act, 1929, s. 151. See "Company Law and Practice" (xxviii) in our issue of the 10th May, 1930 (74 Sol. J. 392). If the son is not *persona grata*, the company would nevertheless be restrained from altering the article, as in *British Marine Syndicate* v. *Alperton Rubber Co.* [1915] 2 Ch. 186.

Accident to Railway Passenger.

Q. 2621. I am acting on behalf of a client who has suffered injuries in the following circumstances: He was a passenger in a train which had stopped at a station and he was about to alight when the train moved on or shuddered, causing him to fall down between the platform and the train and thus sustaining injuries. It is proposed to bring an action against the railway company on the grounds of the negligence of the driver. My client was travelling with a return day excursion ticket and the following conditions were printed on the back of same: "Not transferable. This ticket is issued subject to the Bye-laws, Regulations and Conditions in the Current Time Tables, Bills and Notices of the London & North Eastern Railway Company, and to the special Conditions that neither the holder nor any other person shall have any right of action against the Company or any other Company or person upon whose Railway, Road Vehicles, Vessels or premises this ticket is available in respect of (*a*) injury (fatal or otherwise), loss, damage or delay however caused or (*b*) loss of or damage or delay to property however caused." I should be obliged if you could inform me whether there have been any recent decisions in connection with a railway company contracting with a passenger to such an extent that they can escape any liability for injuries sustained by a fare-paying passenger.

A. The facts of the above case appear to be governed by *Thompson* v. *London Midland and Scottish Railway* [1930] 1 K.B. 41, with the result that the railway company are under no liability.

Insurability of Chapel Keeper.

Q. 2622. I have been asked to advise the trustees of a Methodist chapel as to whether a married woman employed by them as chapel keeper is insurable under the National Health Insurance Act. I understand that this is whole-time employment, i.e., she has no other occupation.

A. The question depends upon whether the married woman is employed as a chapel keeper without money payment, as such duties are often performed gratis, in exchange for free living accommodation. If the chapel keeper lives on or near the premises, while her husband goes to work elsewhere, she will not be insurable, provided she is paid in kind, viz., by living rent free in consideration of cleaning the chapel, and being in attendance at services and meetings. If she lives elsewhere, however, it does not become whole-time employment merely because she has no other occupation. If the chapel is usually locked up the occupation would be a part-time employment, as the cleaning would not take many hours per week, and the other duties would only require her attendance on Sundays, and certain afternoons and evenings during the week. Even occasional attendance, in consideration of a money payment, would render the chapel keeper insurable, as her employment is not casual. Part-time employment is equally insurable with whole-time employment, provided it is in pursuance of a contract of service and not casual. The test is whether there is any payment in money, and, if so, the chapel keeper is insurable for health but not for unemployment benefit.

Wife's Liability for School Fees.

Q. 2623. Husband and wife are both living together and send their child to a private elementary school. The school fees are considerably in arrear, and the husband has now gone bankrupt. Can the fees be recovered from the wife who has separate estate? The only reference upon the question of liability of husband and wife for school fees that we can find is *Hance* v. *Burnett*, 45 J.P. 54, but that case seems to deal only with the liability of a parent for neglecting to send a child to a board school.

A. It is assumed that the wife made the arrangements for the child to attend the school, but in doing so she was merely acting (in law) as agent for her husband. The fact that she has separate estate does not make her personally liable, unless it can be shown that the average station in life (of the pupils at the school) was far above that of the child in question. An argument might thus be deduced that education of that standard was a luxury, and not a necessity for which the husband could be held liable. It would follow that the wife, having ordered the luxury, would be personally liable, but the husband is unlikely to raise such a defence, nor would he give evidence for the proprietor of the school in an action against the wife. As the husband and wife are living together, there is thus no possibility of recovering the fees from the wife.

Notes of Cases.

Court of Appeal.

Rex *v.* **Stepney Borough Council;**
Ex parte **John Walker & Sons.**

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 27th, 28th and 29th November.

Local Government—Rating—Valuation List—Industrial Hereditaments De-rated after Compilation of List—Amendment of List—Mandamus to Compel Amendment.

Appeal from the Divisional Court.

John Walker & Sons, the prosecutors, claimed that their buildings in Stepney were industrial hereditaments, entitled to be de-rated under the Rating and Valuation (Apportionment) Act, 1928. The claim was refused by the respondents, as local authority, and, on appeal, by quarter sessions, but finally the Divisional Court, on 23rd April, 1931, held that all the hereditaments were industrial hereditaments, and ordered them to be inserted in the special list. While the appeal to the Divisional Court had been pending, the new Quinquennial Valuation List, 1930, had been made, and in that list all the hereditaments were placed in Part I as non-industrial hereditaments. That list came into force on 6th April, 1931. No objection had been made by the prosecutors to that valuation list, since they assumed that if the Divisional Court decided in their favour on the case stated, it would be the duty of the rating authority to amend the new list in accordance with that decision. The rating authority refused to do so, on the ground that they were neither bound nor entitled to alter the list, since no objection had been taken to it in due form by the prosecutors. The prosecutors obtained a rule *nisi* for a *mandamus* commanding the rating authority to de-rate the hereditaments, but the Divisional Court discharged the rule. The prosecutors appealed. The court allowed the appeal.

Lord Hanworth, M.R., said that the contention of the respondents was that the remedy by *mandamus* was a special remedy, and that it was not the proper remedy in cases where the Legislature had provided a sufficient or appropriate remedy to meet the case. It was said that the appellants ought to have taken steps to meet the situation at a time when the valuation list had not become a final list, and that, not having done so, they must now pay. He would assume on the construction of the various material Acts that there was a right to object to being put on the list by the normal procedure. But the question arose whether that was a sufficient and appropriate remedy in the present case. He was unable to accept the view that it was necessarily so. Those words must be words of degree. It was said that the matter was decided by the decision of the Court of Appeal in *Rex* v. *City of London Assessment Committee* [1907] 2 K.B. 764, and that by that ruling the court ought not to grant a *mandamus*. But in the case of 1907 there was a right of appeal to quarter sessions, which was an alternative and effective remedy, of which the appellants should have availed themselves; whereas in the present case the appellants had taken what steps they could to test the decision of the assessment committee and had carried the appeal to quarter sessions. The present was a case of persons who had tried to help themselves and who had only failed to take proceedings because it seemed at the time unnecessary to do so. It was unreasonable to maintain that, because they had failed to take certain steps which at the time seemed unnecessary, the de-rating provisions of the Act with regard to those premises were to be inoperative for the next five years. It was said that there was no power and no duty on the rating authority to amend the lists by putting the industrial hereditaments of the appellants on the special list. But once the order was made which directed that the appellants were entitled to relief, then, notwithstanding anything that might have happened before the quinquennial lists were drawn up, there was a duty on the rating authority to make the necessary amendment.

Counsel: *Sir William Jowitt*, K.C., *Maurice Healey*, K.C., and *R. T. Sharpe*, for the appellants; *Scholefield*, K.C., and *Hubert Hull*, for the respondents.

Solicitors: *Redfern & Co.; E. F. L. Danbury*, for the Town Clerk, Stepney.

[Reported by G. T. Whitfield-Hayes, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Bartter *v.* **Gambrill.**

Luxmoore, J. 15th and 16th November.

Tenant for Life—Settled Land—Exchange—Measure of Advantage—Value of other Land increased—Duty of Solicitor—Negligence.

The plaintiff was tenant for life of a cottage and a piece of land with a frontage on Cheriton High-street of about 90 feet, its maximum depth being about 17 feet on the east, while on the west it narrowed to a point. She agreed to an exchange, which was in due course carried through, whereby she parted with a portion of this land to a builder named Simmons and received in return another piece of land, thus coming to occupy a compact site with a frontage of about 22 feet and a depth of about 67 feet. In performing this exchange, in accordance with the agreement, the defendant acted as solicitor for the plaintiff, who now brought this action in respect of damage claimed to have been suffered by her through various alleged acts of negligence on his part.

Luxmoore, J., in giving judgment, said that the plaintiff had brought this action because, in her opinion, the owner of the land behind that with which she had parted had by reason of the exchange increased the value of his land by a sum in excess of the value of the land he had given in exchange. Therefore, in this view, he should have paid £50 in addition to the land he had given. His Lordship considered that, for the purposes of this action, the question of damage resulting from this transaction must be looked at from the plaintiff's point of view, apart from the effect of the exchange on the value of the adjoining land owned by Mr. Simmons. From the plaintiff's point of view, she had gained an advantage, for the land she now held was more valuable than the land she formerly held. She must therefore fail, even had the defendant been negligent. Dealing with the charges of negligence, his Lordship said that, whether or not the agreement for exchange previously signed by the plaintiff was a good memorandum of contract within s. 40 of the Law of Property Act, 1925, a solicitor was not obliged to point out to the person instructing him that he was not legally bound to carry out his bargain. The plaintiff's brother-in-law, after obtaining the consent of the plaintiff and of the trustee of the settlement to this exchange, had asked the defendant, who was acting for Mr. Simmons, to act also for the plaintiff. Accordingly, he prepared the deeds considering, like the others concerned, that it was to the plaintiff's advantage. There was no ground for suggesting that he failed in his duty to her as a solicitor.

Counsel: *J. B. Richardson; Charles Harman.*

Solicitors: *Benham, Synnott & Wade*, for *Frederic Hall and Co.*, Folkestone; *Morris, Ward-Jones, Kennett & Co.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re **Hanlon; Heads** *v.* **Hanlon.**

Eve, J. 23rd November.

Will—Construction—Gift—Condition—Uncertainty—In terrorem—Forfeiture—Validity.

This was an adjourned summons raising the question whether a condition attached to a gift was void for uncertainty, or for any other reason. By his will dated April, 1928, the testator directed his trustees to hold a moiety of his trust

funds upon trust to pay the income thereof to his wife during her life or widowhood, and on her decease or remarriage upon trust for his children J. H. and M. H. in equal shares, provided that if his daughter M. H. should intermarry with a certain person named in the will or live with him as his wife or leave home with the intention of living with him or misconduct herself in any way with him or be delivered of a child of which he should be the father, then any devise or bequest to her should be forfeited and void, and she should be deemed to have died in the testator's lifetime as a single woman. The testator died in 1932, and his will was duly proved. There was evidence that the man referred to in the proviso was married, and had left the district, and that M. H. had not seen him for some years.

EVE, J., said it was argued that the condition was void for uncertainty or was bad as being *in terrorem*. But conditions subsequent intended to defeat a vested interest must always be construed strictly, and to work a forfeiture there must be a breach of a defined line of conduct: *Egerton* v. *Earl Brownlow*, 4 H.L.C. 208; and *Clavering* v. *Ellison*, 7 H.L.C. 725, and on those authorities he would not be warranted in holding that any of the conditions was void for uncertainty. Then it was said that there being no gift over, the doctrine of *in terrorem* applied, and made conditions void, but the mere absence of a gift over would not prevent a revocation from taking place: *In re Catt's Trusts*, 2 H. & M. 46. The real difficulty was that the doctrine of *in terrorem* only applied to conditions relating to marriage and disputing wills. In his lordship's opinion so long as the man referred to was living the trustees could not make over to M. H. her share of residue.

COUNSEL: *F. B. Alcock; Leonard Stone; E. M. Winterbotham; G. R. Younger.*

SOLICITORS: *Doyle, Devonshire & Co.*, for *Hannay & Hannay*, South Shields; *The Official Solicitor.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Lavell and Co. Limited *v.* A. & E. O'Leary.

Macnaghten, J. 22nd November.

LANDLORD AND TENANT—DISTRESS FOR RENT—GOODS LEFT ON PREMISES AT TENANT'S REQUEST—REMOVED BY REMOVAL CONTRACTOR—UNAWARE OF DISTRESS—NOT LIABLE FOR POUND-BREACH—SALE OF DISTRESS ACT, 1689 (2 W. & M., sess. 1, c. 5), s. 4—DISTRESS FOR RENT ACT, 1737 (11 Geo. 2, c. 19), s. 10.

In this case the plaintiffs, Lavell and Co., Limited, were the landlords of premises consisting of the first floor of 113-115-117, Charing Cross-road, which they had let to Wong Gee, the proprietor of a Chinese restaurant there, the Canton Cafe, for a term of seven years by a lease, dated the 19th December, 1928. On the 17th June, 1932, the tenant owed the plaintiffs for rent and they distrained on the premises for the amount. On the 24th June, 1932, a further sum became due for rent, and on the 5th July, 1932, the plaintiffs levied a further distress. In both cases the bailiff took what was described as "walking possession," that was, he did not remain permanently on the premises, but by agreement with the tenant and for the tenant's convenience called to inspect the goods once daily. The defendants, a firm of removal contractors, who had received instructions, attended at the premises on the 14th July, and in the ordinary course of business removed the goods distrained on, which chiefly consisted of tables and chairs used in the restaurant. The defendants acted without any knowledge that the goods had been distrained on. The plaintiffs thereupon claimed from the defendants treble damages in pursuance of the Sale of Distress Act, 1689. At that date, 1689, goods could only be impounded in a public pound, but by the Distress for Rent Act, 1737, it was enacted that the distress may be impounded or otherwise secured on the premises chargeable with the rent.

MACNAGHTEN, J., said that as far as he was aware the question for decision had never yet arisen for decision or even for discussion. It was conceded that if the offence of pound-breach was committed the fact that it was committed unwittingly did not matter, and it seemed to him that persons who supplied the means of committing the offence must come within the class described in the statute as offenders and be liable to treble damages. In this case the goods in the open restaurant were left just as they were. No step of any sort was taken to secure them against removal by anybody. Nobody was left in possession to guard against removal, and although as between Wong Gee and the plaintiffs Wong Gee could not be heard to say that the goods had not been impounded, as between the plaintiffs (the landlords) and a stranger (the defendants), the landlords had failed to prove that they had complied with the Statute of 1737. They had failed to prove that they had impounded or otherwise secured the goods, and having failed to prove that they were not entitled to the remedy given by the Statute of 1689. In his judgment the action was not maintainable, and must be dismissed. (In case of appeal his lordship fixed the value of the goods at £50).

COUNSEL: *J. P. Eddy* and *C. S. Davis*, for the plaintiffs; *Cartwright Sharp*, for the defendants.

SOLICITORS: *R. H. King and Co.; Hobson, MacMahon and Cobbett.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

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Sir Herbert Nield, P.C., K.C., D.L., J.P., of The Bishops Avenue, N., and Dr. Johnson's Buildings, Temple, E.C., Recorder of York, left estate of the gross value of £8,915, with net personalty £8,129.

Reviews.

Dunstan's Hire Purchase Law. Third Edition. 1932. By E. Holroyd Pearce, of the South-Eastern Circuit, Barrister-at-Law. Demy 8vo. pp. xxiv and (with Index) 188. London: Sweet & Maxwell, Ltd. 15s. net.

This third edition of a work already well known brings the subject well up to date and covers effectively the case law and statute law created since the last edition appeared. During recent years the extension of the hire-purchase system has been so vast that the courts of justice have been increasingly concerned with its legal aspects, and it is by no means certain that all the problems arising out of litigation in this connection have been solved. The learned author of the present volume has grappled with these problems in a concise and lucid manner and we think the volume he has produced as a result will be found to be of great value to the practising advocate. The index of statutes is comprehensive and carries us down to the Moneylenders' Act, 1927. The case law appears to include everything right up to date which has any bearing upon the subject. A new chapter has been added in the present volume which deals with systems of hire-purchase finance; and here is to be found interesting guidance in relation to the position of limited companies which exist for the purpose of financing hire-purchase business. An appendix of forms and a carefully chosen index add to the usefulness of the volume.

Limitation of Actions in Equity. By John Brunyate, M.A., of Gray's Inn, Barrister-at-Law. 1932. Demy 8vo. pp. xxviii and (with Index) 302. London: Stevens & Sons, Ltd. 12s. 6d. net.

The subject dealt with in this volume is one which has hitherto been allowed to remain somewhat in obscurity, and, as the learned author himself points out, this obscurity has extended even to the courts themselves since, even in recent times, the decisions are often in conflict, possibly because the relevant authorities and arguments are not always brought to the notice of the court. The volume before us is substantially the essay which won the York Prize at Cambridge University in 1929, for which the subject set was the "Lapse of Time as a Bar to the Enforcement of Equitable Rights." The essay, however, has been supplemented by an additional chapter dealing with the recovery of arrears in which the effect of the Statutes of Limitation in equity is fully and carefully considered. Case law on the subject is brought up to the present date, and the volume may be recommended as a very complete and clearly-written guide to the whole subject of limitation of actions.

Jottings from a Fee Book. By His Honour Judge Barnard Lailey, K.C. 1932. Crown 8vo. pp. 156. Portsmouth: W. H. Barrell, Ltd.; London; Simpkin Marshall. 7s. 6d. net.

When the legal "Man of all work," as the learned author of this volume styles himself, settles down to write his reminiscences, the product of this congenial occupation is always sure to be of interest to those who know the surrounding times and circumstances. Judge Barnard Lailey tells us that he asked an old friend to read the manuscript before it went to the printer. The first helpful suggestion the friend made was that the title should be changed to "Leaves from a Poacher's Diary." The suggestion itself might well have been amended to indicate that the said poacher had proved himself to be an excellent gamekeeper; and the learned chairman of Hants Quarter Sessions need have no doubt as to the latter being the reputation in which he is held and by which he will be remembered by all who have had opportunity to appreciate his geniality and fairness as a judge. It goes without saying that the volume will provide many pleasant hours for all who read it.

Books Received.

The Complete Examinee. By P. H. Blackwell, F.C.A. 1932. London: Gee & Co. (Publishers), Ltd. 6d. net.

International Trade and the Balance of Payments. By Geoffrey F. Sadler, B.A., A.C.A. 1932. London: Gee & Co. (Publishers), Ltd. 6d. net.

Estate Duty in Relation to Limited Companies. By Stanley A. Spofforth, A.S.A.A., F.S.S. 1932. London: Gee & Co. (Publishers), Ltd. 6d. net.

An Orator of Justice: A Speech Biography of Viscount Buckmaster. Edited by James Johnston. 1932. Demy 8vo. pp. xi and (with Index) 300. London: Ivor Nicholson and Watson, Ltd. 15s. net.

Evidence in Criminal Cases. By William Shaw, Deputy Clerk to the Justices for the City of Manchester. Second Edition. 1932. Crown 8vo. pp. xxxi and (with Index) 263. London: Butterworth & Co. (Publishers), Ltd.; Shaw and Sons, Ltd. 10s. 6d. net.

Chitty's Annual Statutes. Vol. 28. Part I. By The Hon. Dougall Meston, of Lincoln's Inn and South Eastern Circuit, Barrister-at-Law. 1932. Medium 8vo. pp. xxv and 565. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 25s. net.

Tabulating Machinery and its Application to Accountancy Problems. By W. D. Turner, C.A. 1932. Demy 8vo. pp. 28. London: Gee & Co. (Publishers), Ltd. 1s. net.

Town and Country Planning. A Quarterly Review. Vol. I. No. 1. November, 1932. London: The Garden Cities and Town Planning Association. Subscription, 5s. per annum, post free.

Report of the Committee on Local Expenditure (England and Wales). 1932. Medium 8vo. pp. 173. London: H.M. Stationery Office. 2s. 6d. net.

In Lighter Vein.

The Week's Anniversary.

At about six o'clock in the evening of Sunday, 13th December, 1818, Lord Ellenborough expired at his house in St. James's Square, "without a sigh and without a struggle." Indeed his last breath did not cost him so deep a pang as the resignation of the Chief Justiceship a few weeks earlier. Broken in health, wounded in his pride at the personal defeat suffered by him when, in open defiance of the full weight of his judicial authority, Hone, the bookseller, had been thrice successively acquitted on sensational political charges, the great judge had desperately continued to fulfil the duties of his office for almost a year longer. Fretful and irritable, suffering agonies from gout and erysipelas, he had for months been scarcely able to totter to his seat in court before sheer collapse forced him to retire practically to his death bed. His old school, the London Charterhouse, received his body which was laid beside that of Thomas Sutton the founder. The funeral was attended by a crowd of distinguished men, besides the leaders of the legal profession. The profound solemnity of the occasion was deepened by the gloom of a dense fog which covered the City and through which a shadowy procession bore the dead Chief Justice to the land of shadows.

Royalty Amid the Lawyers.

Royalty once again favoured Lincoln's Inn last dining term, when Prince George became a barrister and a bencher of the society. The event cannot fail to recall the first occasion when the fountain of honour played on that Inn, and indeed on any Inn of Court. It was in 1671 that Charles II, while being entertained to dinner in the Hall "to do a transcendant honour and grace to this society . . . was pleased to demand

the booke of admittances to be brought to him and with his own hand entered his royall name therein most graciously condescending to make himself a member thereof." This gracious gesture was "instantly acknowledged by all the members with all possible joy and received with the greatest and most humble expressions of gratitude, itt being an example not precedented by any former King of this realme." Prince Rupert and several other Lords followed suit and put on student's gowns "with which his majestie was much delighted." After drinking the health of the society and scattering a few judicious knighthoods among benchers, barristers and students, he departed full of Stuart charm with "large expressions of his most gracious acceptance of the enterteynment." Moreover, when the new knights carried the humble thanks of the society to Whitehall, he "did the said benchers the honour to kisse his hand." Since then the connection with the citadels of the law has become almost hereditary in our royal house. His present Majesty joined Lincoln's Inn and King Edward VII belonged to the Middle Temple.

LEGAL LEVITY.

The trumpeters' choice of a musical comedy air—"Truth is so beautiful"—for the opening of the Manchester Assizes seems to have struck the general press as exceptionally incongruous, but whether it was the tune or its title which seemed incompatible with legal proceedings is nowhere indicated. Actually lawyers sometimes appear to hold these ceremonies fairly lightly. For instance, when a High Sheriff in attempting to make conversation with Mr. Justice Buller asked whether he had gone to see the elephant at the last assize town, the judge replied: "Well no, Mr. High Sheriff, I cannot say that I did for a little difficulty occurred, we both came into town in form with the trumpet sounding before us and there was a point of ceremony to be settled which should visit first." Parenthetically, I may add that I have never understood what early Victorian inhibition made an author in 1846 half apologise for this mild pleasantry as having been made when the world was "not so highly refined as at present." The trumpets of Manchester also recall the English judge in New Zealand who, having commented strongly on the absence of javelin men from the assizes, soon afterwards found himself attended by a squad of theatrical supers in tinsel armour.

Obituary.

CAPTAIN J. C. THORNTON.

Captain James Cecil Thornton, solicitor, of Brighton, died recently. He was admitted in 1924, and was a partner in the firm of Messrs. J. C. Thornton & Clement, solicitors, of Brighton.

MR. H. D. GRIMSDALL.

Mr. H. D. Grimsdall, solicitor, of Hornsey, died recently. Mr. Grimsdall, a son of Mr. H. Grimsdall, High Bailiff of Shoreditch County Court, was admitted in 1904, and was a partner in the firm of Messrs. Edgar Robins & Grimsdall.

MR. R. R. FORRESTER.

Mr. R. R. Forrester, solicitor, of Broxburn, died on Friday, the 2nd December, at the age of fifty-five. He had practised at Broxburn for thirty-two years, and was registrar of births, deaths and marriages for Uphall Parish.

Sir Charles Hulbert, of Mount Park, Harrow-on-the-Hill, Chief Master of the Supreme Court of Judicature, Chancery Division, left estate of the gross value of £17,414, with net personalty £9,541.

The Solicitors' Managing Clerks' Association.

FESTIVAL DINNER.

The Association held its twenty-seventh festival dinner at the Wharncliffe Rooms on 1st December, with Mr. R. W. Everard in the chair. Among those present were Lord Tomlin, Mr. Justice Eve, Mr. Justice McCardie, Mr. Justice Macnaghten, Sir Leslie Scott, K.C., Mr. Norman Birkett, K.C., Mr. Robert Peel, K.C., Mr. W. Spens, K.C., Master W. V. Ball, Master E. A. Jelf, Dr. Charles E. Barry (President of The Law Society), Mr. F. W. Beney, Mr. A. W. M. Colson, Mr. H. A. H. Christie, Mr. F. R. Evershed, Mr. R. S. Fraser (Master, City of London Solicitors' Company), Mr. W. F. Lyons, Mr. P. Marr Johnson, Mr. Noel Middleton, Commander K. B. Millar, R.N., Mr. R. O'Sullivan, Mr. H. G. Robertson, Mr. Registrar A. Stiebel, and Mr. A. O. Thomas.

After the loyal toasts had been honoured, Lord TOMLIN proposed the health of "The Association." He said that the Association had the advantage that it was of about the same legal age as himself: he had been called to the Bar in 1891 and the Association had been born in 1892. It was a very valuable society with which all members of the profession had been long acquainted, and there was not a member of the Bar or of the Bench who had not friends in it. Among its activities it did not neglect the lighter side of life; besides the Festival Dinner every year it held an annual outing, and in the account of last summer's outing, published in the "Gazette," it had also added to the English language. Lord Tomlin said that when he mounted a red vehicle on his way home he did not regard his act as the process of "embussing," but he would do so in future. The Association had recently entered new offices in Arundel-street, a fact which recalled to his mind a short verse:—

"At the top of the street the lawyers abound,
And down at the bottom the barges are found;
Fly, Honesty, fly to a safer retreat,
For there's craft in the river and craft in the street."

The legal profession had an admirable unity about it. Many people thought that the solicitors' managing clerks made the judges; at any rate there would be no judges if there were no barristers, and, equally obviously, there would be no barristers if there were no solicitors, and no young man would get a brief from any solicitor unless the solicitor's managing clerk told the solicitor where to take it. Lord Tomlin supposed, therefore, that the solicitors' managing clerks were in the habit of regarding judges with that mixture of admiration and astonishment which was justified in a creator regarding the works of his own hand.

Lord Tomlin was pleased, he said, to be among lawyers that night. He had recently been among scientific men, a company which was disturbing, for it was quite plain that scientific men were responsible for all the trouble in the world, their inventions were the ruin of the human race, and they talked a great deal about them. Every single one of the scientific men who had spoken at that gathering of a fortnight ago had taken no less than half an hour, and the only thing that Lord Tomlin had been able to conclude was that they did not know what to do with the things that they had invented, and that the odds were that the whole universe was going to pieces. After that, it was a great comfort to be in a company where the presence of Mr. Justice Eve restored his confidence in stability. The Association was doing much to promote the unity, both professional and social, of solicitors' managing clerks; that was a good work, because the legal profession was really one and although the world would be able to do without scientists it would never be able to do without lawyers.

THE WORK OF THE ASSOCIATION.

The PRESIDENT, in reply, said that the Association had been founded in 1892 by a small body of managing clerks who had found their liberties threatened by a proposal to take away their right of audience. They had been successful in maintaining this right, which managing clerks had enjoyed ever since. The Association had been on a voluntary basis until 1928, when it had become a Company limited by guarantee. The Association maintained two courses of lectures in the year, one on common law and the other on conveyancing subjects; these were held in the Lord Chief Justice's Court at 6.45 p.m., a most convenient time and place. Bournemouth had formed a branch in the previous year, and the Association had received from it a telegram of fraternal greetings. The secretary, Mr. Read, was to have been present, but had unfortunately not been able to come. Mr. Blackburn, who found time to edit the "Gazette" in the intervals of carrying on a busy conveyancing practice, performed great service; he must, said the President, have

had much difficulty over the October number with so many possible contributors away. Many members of the Association had attended the United Law Clerks' Centenary, and Mr. Tindall and Mr. Perry were prominent members of the committee of the Solicitors' Clerks' Pensions Fund. The New Procedure had come and would, it was hoped, hasten the administration of justice. As soon as it had been inaugurated, the Association had arranged a lecture on it, which was delivered by Mr. F. W. Beney to a large audience in the Inner Temple Hall. A full report was published in the "Gazette." Mr. Everard concluded by warm personal tributes to all his colleagues.

Sir LESLIE SCOTT, K.C., in proposing the health of "His Majesty's Judges," said that he gave the company the serious toast of the evening. Amongst lawyers it was a perpetual toast, like the loyal toast of "The King." It was given at every dinner where lawyers were met together, and yet it was no more hackneyed a toast than the King's toast. When the health of His Majesty the King was proposed, the company was moved deeply by emotions of patriotism and loyalty; when the toast of His Majesty's Judges was proposed, lawyers, who had given up their lives to justice, were equally stirred to depths that non-lawyers could not fathom. To lawyers the toast represented the rule of law, the stern protection of society against the wrong-doer, the helping of the weak against the strong, equal justice to all; the very keystone of the arch upon which the building of civilisation rested. The Prince of Wales, with that curious knack he had of saying the right thing at the right time, had recently appealed to the country to help in social service. His Majesty's Judges were engaged in social service throughout their judicial life. The speaker was, he said, always impressed by their assiduity in concentrating the whole force of their personality on trying to do justice in the individual case before them. The Bar could not hear the words of the toast without also recalling to themselves the unfailing courtesy which they always received at the hands of His Majesty's Judges and which made the Bar such a delightful life.

The profession had to face the fact that if it were going to give the community adequate service, it would somehow or other have to make it cheaper. If he might make a suggestion about solicitors' costs (laughter), he would like to see the abolition of detailed assessment in favour of a new method by which the taxing master assessed a fair lump sum. This would save a great deal of cost and give more satisfaction to the client.

Lord Tomlin, in a recent address, had also referred to the intolerable cost, direct and indirect, of expert evidence and had proposed to appoint official experts who should normally be the only experts called in a case. He had depicted for these experts a life of real joy in the courts, for he had proposed that they should be cross-examined by both sides. If anybody could imagine a better method of extracting the true metal of truth from an expert, the speaker had yet to hear it. The expert would have no interest at all in either side, and his knowledge would be subjected to an unrivalled test. In these days of the departmentalisation of all science, manufacturing and art, and of the need for economy, the list of official experts might at first be quite small; the same expert would, perhaps, give evidence in one case on a low-temperature carbonisation process; in the next case on musical copyright; in the next on the manufacture of artificial silk stockings, and in a fourth on foot-and-mouth disease in cattle. Even if this versatility were not practicable, quite a small department at the Law Courts could keep in touch with all the various activities of the national life and have a panel of names from which experts could be selected in each case. The parties would be at liberty to call their own expert evidence, but would have to pay the costs unless the judge ordered otherwise. Lord Tomlin had also suggested that there should be only one appeal. The great British Constitution had a maxim that the House of Lords could not go wrong, and Lord Tomlin proposed that this maxim should be transferred to the Court of Appeal. (Lord Tomlin: "No, he doesn't!" Laughter). The community at large was anxious to arrive at the *finis litium* and would welcome a system by which a case terminated after one appeal. It was difficult for lawyers, who believed in the judgments of the House of Lords, to look at that question with the eyes of the community, but reform along those lines would on the whole satisfy the public. Sir Leslie concluded with a warm tribute to Mr. Justice McCardie's qualities of collecting and elucidating the law on every question that came before him.

TRIALS OF HIS MAJESTY'S JUDGES.

Mr. Justice MCCARDIE, in reply, said that when he had listened to the praise given to His Majesty's Judges, he had recalled the reply made by Mark Twain when he had received a laudatory address from some county in the Western States of America: "Homer is dead, Shakespeare is dead, Milton is dead, and I don't feel at all well myself!" Hospitality, he contended, was one of the great secrets of English public life; it brought men together and reminded them of the things that united, not of the things that divided. If hospitality stood firm in England it would still hold the nation together. The speaker recalled old days on the Midland Circuit, and asked the company never to forget the humane element of the evening that it was enjoying. Men were much alike, whatever their rank, and life was like the dial in the corridor of a great hotel on which the names of visitors were marked "In, out; out, in," An old King's counsel on the Midland Circuit had once, he said, expressed the opinion—after making an unsuccessful application before a newly-appointed judge—that judgeship was a strange thing; he did not know why it should be so, but whenever a man was appointed a judge it always seemed to bring out the very worst features of his character. A judge led a strange life, and not the least of his trials was the constant anxiety of repressing opinions that would be better expressed at more appropriate moments. Patience was the great quality of a judge: litigants, counsel, and the public all appreciated it, and it ranked very near the essential quality of justice. The instinct for justice was embedded not only in the heart of the British folk but in the hearts of all people, who would continue to demand it as long as the human race existed.

Mr. Justice MCNAGHTEN remarked that one of the sins against which faithful men were warned in the Thirty-nine Articles was performing works of supererogation, and that to speak after Mr. Justice McCardie almost constituted such a sin. Some reference had been made to the New Procedure and the danger of multiplicity of appeals. In all applications for directions in the New Procedure the parties were invited to express their consent to have the case finally decided by the judge of first instance. By reason of his modesty, the speaker said he had never felt inclined to press this invitation upon the parties. Whether for that reason or for some other, he had to confess that he had not found great readiness among litigants to give that consent. If the New Procedure was to be a success it could only be so if it deserved and gained the confidence of the profession, and amongst the profession no member was more important and exercised greater influence than the managing clerk.

Mr. Justice EVE, proposing the health of "The Ladies," regretted the disparity of age which had grown up between himself and the ladies in the last seventy-six years. He had noticed, he said, that a German author had recently alleged as grounds for divorce that his wife had ceased to help him to acquire self-confidence. The lady did not think very highly of his literary productions, and his case was that it was the duty of a wife to make a man think a lot of himself and to send him into the world full of self-confidence. The ladies present need, he said, have no fear of their husbands sharing the feelings of that author; he had never in the whole of his life met a managing clerk who was not full to the brim of self-confidence. This was a valuable asset, but one which it was not wise to allow to appear too prominently, and a great gift of the managing clerk was his modesty, which masked his self-confidence, and his politeness, which enabled those with whom he conversed entirely to overlook how much of it he possessed. If an enquiry were made and it were necessary to be truthful, a large number of married men would be found to admit that their self-confidence and other virtues were largely due to the kindness and tolerance of their wives.

Mr. Norman Birkett had been retained to reply on behalf of "the ladies." By reason of the grand advertisement that this honour would afford, he had reduced his usual fee—which ran to four figures— to a nominal amount, and on this occasion he would appear unsupported by a junior. Mr. Birkett was a sound lawyer, a brilliant advocate, and a charming comrade, and was also the devoted father of a whole troop of fascinating children.

Mr. NORMAN BIRKETT, in reply, said that it was fitting that the toast of the daughters of Eve should be proposed by his Lordship. He always, he said, felt great awe for anybody in the Chancery Division, for anyone who could make a familiar friend of an originating summons certainly had a high degree of character, and if to that ability were united the grace, humour, wit and good-fellowship of Mr. Justice Eve, the perfect character was approached. Mr. Birkett suggested tentatively that he had been selected for the honourable task before him because his profession enabled him to put a good complexion on things, but reflected that ladies in these modern days were so skilful that they could put the best possible complexion upon themselves. He related that a colleague, something of a cynic, had advised him to remember that the modern women really did like a cave-man, and to introduce

into his speech something of that tough and terrible note. When he had suggested that possibly a modern woman liked a man with something tender about him, his friend had replied, "Yes, provided it is legal tender." Mr. Justice Eve, he continued, deserved thanks for the testimonial he had given to husbands. The ladies, who had often wanted to know what their husbands did in the evenings, had been informed by the President that they attended lectures by Mr. Lyons on the law of torts. They were still anxious to know the law of torts on the following morning. They were also grateful for the assurance that they gave their husbands the self-confidence which they needed. They did not always get their deserts, but they had received them that evening.

Mr. EBENEZER SMITH proposed the health of "The Chairman," and Mr. EVERARD replied.

SOME PROBLEMS UNDER THE DEEDS OF ARRANGEMENT ACT.

This Association also held a meeting at Middle Temple Hall on the 2nd December, at which Mr. Justice Luxmoore took the chair and Mr. W. N. Stable delivered a lecture with this title.

Mr. Stable explained that the Act was designed to give publicity in all cases where the debtor was compelled by stress of financial circumstances to make some arrangement with his creditors outside the ordinary rules of payment; and to provide for some sort of supervision of the administration of estates wound up outside bankruptcy. The Act conferred no title on a deed trustee, so that he could not attack a particular payment as a fraudulent preference, nor claim under the doctrine of reputed ownership. The Act dealt not with transactions but with instruments; the instruments might, however, consist of a number of different writings, with the result that unless the whole arrangement was concluded by word of mouth some piece of paper would almost inevitably come into existence to bring the transaction within the Act. A trustee in difficulties could apply to the court for directions.

A deed of arrangement should be prepared with the same end in view as an artist had in painting a picture; the result ought to show a certain coherence and unity. The tendency had grown up, possibly through the influence of accountants, to lump into one deed every conceivable clause, whether applicable to a composition, to an assignment of property, or to a deed of inspectorship. The multiplication of provisions resulted in confusion. The best deed was that which gave effect to the decision of the body of creditors in the simplest possible way while containing some element of elasticity to provide for the unforeseen.

Many difficulties could be avoided if the trustee and his advisers remembered that a deed of arrangement was nothing more nor less than a contract. Bankruptcy was governed by an Act and rules which provided for almost every contingency, but a trustee was empowered by the deed and nothing more. He was up against the initial difficulty that a deed of arrangement must almost of necessity be an act of bankruptcy in itself, and that if the debtor was adjudicated bankrupt on a petition presented within three months the deed would be avoided; the trustee in bankruptcy would obtain title from the moment before the execution of the deed, and the deed trustee would find that he had been a trespasser from the beginning. The trustee in bankruptcy might call on him to hand over all the assets or to pay him their value. If he had realised the assets at the best possible price and kept the proceeds intact, his position was simple, but if he had taken over the debtor's business and it had further deteriorated he might be personally liable for the deficiency. He must therefore proceed with the utmost caution at the outset; arrange to be able at any moment to render an accurate account of his stewardship, and cut down outgoings and expenses to the minimum. He had no lien on the assets for his expenses, for s. 21 of the Act provided only that he should be allowed expenses properly incurred in the performance of any of the duties imposed on him by the Act, not those imposed on him by the deed. Mr. Stable suggested that the trustee should have a clause in the deed indemnifying him, but gave the warning that such a clause must be very carefully drawn.

ILL-ADAPTED AND CONFUSED DEEDS.

The chief difficulties that a trustee could avoid arose from disregarding the principle that the position of the parties to a deed was regulated by the terms of the contract, and from failure to find out exactly what the provisions of the particular contract were. The remedy for these was obvious. Some contracts, however, were drawn up in a form which did not meet the facts of the particular case. A debtor, fearing an execution, often called his creditors together and executed a deed of assignment in one of the common forms which, where an immediate realisation and distribution were contemplated, generally met the case. In other instances, however, wide powers and discretions were necessary if the estate were to be administered satisfactorily, and in this class of case it was advisable, before the deed was executed, to ascertain the acts so that the deed might deal with them adequately. Otherwise unforeseen contingencies arose and the estate could not be administered strictly in accordance with the provisions; the task of getting the creditors together and persuading them to enter into a second agreement supplementing or correcting the first might be impossible, and if the trustee went outside the provisions in order to meet the practical necessity of the situation he ran a definite risk.

Another avoidable difficulty was introduced by making the deed unnecessarily complicated. A deed sometimes provided in the first place for a composition payable by instalments and contained a series of provisions that if any instalments were not paid on their due dates the debtor was to assign his assets to the trustee for realisation and distribution. A deed of this kind was, in the lecturer's experience, unworkable; it might land everyone concerned in an *impasse* from which they could only escape by litigation.

Societies.

Incorporated Law Society of Liverpool.

The 105th Annual General Meeting of the Incorporated Law Society of Liverpool was held in the Law Library on Friday, the 25th November, 1932, at 1.30 p.m.

The meeting was well attended and included the President (Mr. R. D. Cripps) in the chair, Sir Charles Morton, Messrs. E. L. Billson, J. C. Bromfield, A. E. Chevalier, L. S. Holmes, J. G. Kenion and P. N. Stone (ex-Presidents), Messrs. C. W. Wright (Vice-President), J. W. Cocks (Hon. Treasurer) and G. E. Castle (Hon. Secretary).

The notice convening the meeting having been taken as read, the President delivered his address.

He opened his remarks by stating that the Liverpool Law Society, which kept in the forefront of Provincial Societies, was over 100 years old and yet retained all the energy of youth.

The annual report of the Committee and statement of accounts showed that the Society was in a satisfactory condition.

There were now 426 members, which was a slight increase on last year. Twenty new members had been elected, but eight had been lost through death or resignation.

He then spoke about the reduction of remuneration, whereby the 33⅓ per cent. increase in the scale of costs had been reduced to 25 per cent. in contentious matters, and in non-contentious business would shortly be reduced to 20 per cent.

The Lord Chancellor had asked the opinion of The Law Society as to the propriety of reducing or abolishing the 33⅓ per cent. increase, and The Law Society invited the views of the Provincial Societies. The question was carefully considered by the Committee, figures and reports having been obtained from a number of firms showing that the increase in overhead charges (rent, rates, taxes, salaries, etc.) more than over-balanced the 33⅓ per cent. In other words, notwithstanding the 33⅓ per cent. increase, solicitors received a smaller percentage of the gross profits than in years gone by and the Committee had reported accordingly. Representatives of The Law Society met the Lord Chancellor and members of the Rule Committee, and after a full and friendly conversation The Law Society had agreed to accept the reduction.

It was, said the President, a gesture and a generous gesture. It showed that the members of the profession were not only ready to bear their own burdens but to help clients to bear theirs. The Lord Chancellor had described it as "a very generous contribution to meet the difficulties of the day."

Mr. Cripps next mentioned the Solicitors' Act, 1932, which came into operation on the 1st October, 1932, and the Solicitors' Bill, a draft of which had already been prepared.

Its object was to give the Council of The Law Society full power, with the concurrence of the Master of the Rolls, to make rules for the professional practice, conduct and discipline of solicitors. These rules would require and receive careful consideration. He understood that Sir John Withers had not only signified his approval of this Bill, but had promised to support it.

Referring to the cost of litigation, the President said that it was too soon to form a definite opinion as to how far these New Procedure Rules would attain their object, but he hoped every endeavour would be made to give them a fair trial. If they should prove a success, he would take steps, if requested, to have the same procedure adopted in the Court of Passage, of which he had the honour to be Registrar.

The interesting and important question of "Compulsory registration of title to land" had been discussed and reported upon by the Committee during the year. The Committee pointed out that while the legal profession were always ready to assist in any scheme relating to the transfer of land, they believed that the disadvantages of compulsory registration considerably outweighed the advantages, and in the interests of owners of property they strongly advised the retention of the present system, at all events until 1936, when the question of compulsory land registration could be dealt with nationally. The result had been that the matter was allowed to drop.

He concluded his address with the question of obtaining police reports of accidents. This had been mentioned by Mr. L. S. Holmes at the last Annual Meeting, when he pointed out that some police authorities were helpful and some were otherwise, but that from the Liverpool Police they had always received the greatest assistance.

The Society had taken the matter up with The Law Society, who had made representations to the Home Office. As a result of these representations the objections had now to a great extent been removed, but the Society was still pressing for greater facilities.

On the motion of Sir Charles Morton, seconded by Mr. A. W. Chambers, it was resolved: "That the thanks of the meeting be given to the President for his address, and that the same be printed and circulated as part of the Report."

On the motion of Mr. E. C. Edgecombe, seconded by Mr. J. M. McMaster, it was resolved: "That the thanks of the Society be given to the officers and members of the Committee for their services during the past year."

Hampshire Incorporated Law Society.

The forty-first annual general meeting of the Hampshire Incorporated Law Society was held at Kimbell's Restaurant, Southsea. The chair was occupied by the retiring President, Mr. C. E. Martin, of Southampton. The following officers were elected: President, Mr. H. H. Payne (Registrar of the Southampton and Portsmouth County Courts); the Vice-President, Mr. J. C. Dominy, of Eastleigh. Members of the Committee: Mr. A. E. Y. Trestrail (New Milton), Mr. A. L. Bowker (Winchester), Mr. P. B. Ingoldby (Southampton), and Mr. J. T. Coggins (Aldershot). Honorary Auditors: Mr. W. H. Abbott (Southampton) and Mr. H. White (Winchester). Hon. Secretary and Treasurer, Mr. L. F. Paris (Southampton). Representatives on the Board of Legal Studies: Mr. A. C. Hallett, Mr. L. N. Blake, and the Hon. Secretary. A hearty vote of thanks was passed to Mr. C. E. Martin (Southampton), the retiring President, for his services during the past year, and to Mr. L. F. Paris for his work as Secretary and Treasurer.

The new President, Mr. H. H. Payne, gave an interesting address on the "History of County Courts," comparing the number of actions started in the county courts to those started in the High Courts. He traced the history of local courts from their institution, and referred particularly to the Acts of 1845 and 1846, which re-established county courts.

Only this year, he said, they had been given what appeared to be a revival of certain ecclesiastical powers, namely, the enforcing liability for repair of the chancel. Mr. Payne dealt with the variety of jurisdiction of the court and the previous unsatisfactory method of remunerating registrars, which had now been put on a more satisfactory basis. He gave interesting comparative figures of the number of plaints issued and the amounts of money collected through the Portsmouth and Southampton courts.

The President concluded by giving particulars of the various judges and registrars of the Southampton and Portsmouth Courts since 1846.

Mr. A. E. Allen proposed a hearty vote of thanks to the President for his able and interesting address. This being seconded by Mr. Churcher, was carried unanimously.

The members subsequently dined together, when the following official guests were present: Mr. Justice Finlay, His Honour Judge Barnard Lailey, K.C., the Chancellor of the Diocese of Portsmouth, the Recorders of Portsmouth and Bournemouth, Mr. J. H. Harris (Metropolitan magistrate), Mr. J. St. L. Leslie, Mr. W. Blake Odgers and Mr. Lewis (Judge's Marshal).

Society of Clerks of the Peace.

The annual dinner of the Society of Clerks of the Peace of Counties and of Clerks of County Councils took place on Tuesday, the 22nd November, at Claridge's. The Chairman of the Society (Mr. E. S. W. Hart) presided, and those present included: Sir Thomas Inskip, K.C., M.P., Viscount Cobham, Major-General Lord Loch, Brigadier-General Lord St. Levan, Colonel Lord Cottesloe, Lord Deramore, Lord Leconfield, Colonel Sir Lancelot Rolleston, Lieutenant-Colonel Sir Charles Pinkham, Major Sir Charles Price, Sir Claud Schuster, Sir R. Russell Scott, Sir Lynden Macassey, Sir Francis Dunnell, Sir Henry Cautley, K.C., M.P., Sir Ernley Blackwell, Sir Montagu Sharpe, K.C., Sir Ernest Shepperson, M.P., Sir Francis Blake, Sir Percy Jackson, Sir Walter Lawrence, Sir James Hinchcliffe, Sir Kenneth Murchison, Mr. Henry A. Hannen, Mr. John Potter, M.P., Mr. J. P. L. Thomas, M.P., Mr. J. E. Singleton, K.C., Mr. Norman Daynes, K.C., Mr. S. W. Harris, Mr. L. G. Brock, Mr. L. Granville Ram, Mr. S. P. Vivian, Mr. Leonard H. West, Colonel W. V. R. King-Fane, Major J. Loftus Adams, Major P. H. G. Feilden, Major F. W. Smart, Captain E. W. Cemlyn-Jones, Captain Edward Elms Mr. J. W. Gleed, Mr. E. E. Welby-Everard, Mr. H. S. Button, Mr. Gilfrid G. Craig, Mr. B. O. Davies, Mr. W. Clark Jackson, Mr. E. E. Tweed, Mr. Ralph Assheton, Mr. Cecil W. Austin, Mr. A. G. Bradshaw, Mr. L. S. Brass, Mr. H. J. Comyns, Mr. W. F. S. Dugdale, Mr. C. H. S. Ellis, Mr. Ralph Etherton, Mr. T. G. Hirst, Mr. C. Bartlett James, Mr. S. M. Johnson, Mr. H. E. Nourse, Mr. A. H. Perkins, Mr. J. S. Quarmby, Mr. G. B. Lomas-Walker, Mr. John D. Watson, Mr. H. A. Millington, Mr. C. H. Bird, Mr. C. H. Carter, Lieutenant-Colonel Guy R. Crouch, Mr. E. L. Edge, Sir George Etherton, Mr. J. H. Goold, Mr. J. B. Graham, Mr. Thomas Hughes, Mr. D. Johns, Mr. W. O. Jones, Mr. R. Eustace Joy, Mr. J. B. Kelly, Mr. P. Elton Longmore, Mr. Godfrey Macdonald, Mr. E. W. Maples, Mr. H. C. Marris, Mr. H. S. Martin, Mr. H. J. T. McIlveen, Mr. J. C. McGrath, Mr. Tweedale Meaby, Mr. R. L. Moon, Mr. L. G. H. Munsey, Mr. H. J. C. Neobard, Mr. Cecil Oakes, Mr. Hugh J. Owen, Mr. W. T. Phipps, Mr. W. L. Platts, Mr. C. W. Radcliffe, Mr. G. F. Rogers, Mr. H. Rowland, Mr. L. E. Rumsey, Mr. Eric W. Scorer, Mr. F. G. Scott, Mr. J. E. Seager, Mr. H. W. Skinner, Mr. L. Edgar Stephens, Mr. P. A. Selbourne Stringer, Mr. H. G. Thornley and Mr. R. A. Wheatley.

The Hardwicke Society.

An ordinary meeting of the society was held in the Middle Temple Common Room on Friday, 2nd December. The President, Mr. Vyvyan Adams, M.P., took the chair at 8.15 p.m.

In public business Mr. F. A. P. Rowe moved: "That socialism is the solution of the present economic emergency." Mr. G. E. Crawford (ex-President) opposed.

There spoke to the motion: Mr. Walker Smith, Mr. Abraham (ex-President), Mr. Roskill, Mr. Davidson, Mr. Wagstaff, Mr. Alexander, Mr. Boyd Carpenter, Mr. Ungoed-Thomas (Vice-President), Mr. Mayers, Mr. MacLaren, and the Hon. Proposer in reply.

On a division the motion was lost by twelve votes.

University of London Law Society.

The annual general meeting of the University of London Law Society was held last Tuesday night at the London University, Gower-street. Mr. R. C. FitzGerald, the President, was in the chair. There was a good attendance of members, and the retiring officers were heartily thanked for their services. The following were elected for the ensuing twelve months:—

President.—Mr. J. C. Hales.
Secretary.—Miss V. A. Braune.
Treasurer.—Mr. L. L. Gower.
1*st year Representative.*—Mr. L. Watson.
2*nd* .. .. Mr. J. Wood.
3*rd* .. .. Mr. F. E. C. Wood.
Other Interests.—Miss N. Duffell.

Mr. T. J. Hobley, LL.M., a former President of the Society, was awarded the President's Cup for the best speaker for the year decided by the votes of the members. The runners up were Messrs. A. Goodman, F. E. C. Wood and Miss Watson.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, 6th December (Chairman, Mr. H. J. Baxter), the subject for debate was: "That the case of *Sykes* v. *Williams*, 49 T.L.R. 9, was wrongly decided." Mr. W. M. Pleadwell opened in the affirmative. Miss H. M. Cross opened in the negative. Miss Cameron seconded in the negative. The following members also spoke: Messrs. Iwi and Iliff. The opener having replied, and the Chairman having summed up, the motion was lost by four votes. There were nine members present.

Institute for the Scientific Treatment of Delinquency.

This Institute was inaugurated at a meeting held at University College on 29th November. Dr. Edward Glover, one of the foremost exponents of psychological medicine in this country, took the chair, and explained the history and objects of the new body. As he admitted, criminology and the study of the penal system with a view to reform are nothing new, but the new Institute proposes to link up all the existing scattered efforts and to bring to their aid the powerful weapon of psychological science in each of its many forms. He explained that the original members of the Institute, who represented every branch of humane activity as well as of medicine applied to social problems, shared the conviction that a nation of adults could not continue to deal with its criminological problems by the crude diagnosis and primitive therapy of a two-year-old child, and that the first step to the adequate handling of crime was to eliminate hate, anger and anxiety from criminological methods.

Lord Faversham pointed out that the pioneers of the rational approach had been actuated by personal religious motives, and that the present-day exponents of scientific methods would be very glad to use the ways which had been already opened up. The new Institute would, he said, find the intimate first-hand knowledge of the probation officers invaluable. Other speakers predicted that magistrates would co-operate very keenly with a competent scientific body, as they recognised the need of expert advice in distinguishing the offender who should go to prison from the offender who required medical treatment, and in prescribing the kind of treatment necessary for each case.

The meeting brought out the amazing width of the subject, for the Institute will endeavour to co-ordinate probation officers, social workers, the clergy, magistrates, medical officers of local authorities, all individuals and bodies ready to apply psychological medicine to delinquency, solicitors and barristers in criminal practice, His Majesty's Judges, Members of Parliament interested in this aspect of social reform, and Ministers of the Crown. The appalling cost of delinquency to the State —about £12,500,000 a year in enforcement of law alone, without counting the tremendous imponderable loss of potentially-valuable citizens who come within the law through some remediable defect of mind or character—is a measure of the importance of the problem.

Parliamentary News.

Progress of Bills.

House of Lords.

Public Works Facilities Scheme (Huddersfield Corporation) Bill.
Read First Time. [1st December.

Visiting Forces (British Commonwealth) Bill.
Read First Time. [6th December.

House of Commons.

Dog Racing (Local Option) Bill.
Read Second Time. [2nd December.

Housing (Financial Provisions) Bill.
Read First Time. [7th December.

London Passenger Transport (Re-Committed) Bill.
In Committee. [1st December.

Ministry of Health Provisional Order (Buckingham and Oxford) Bill.
Read First Time. [1st December.

Ministry of Health Provisional Order (Leek) Bill.
Read First Time. [1st December.

Ministry of Health Provisional Order (Rugby Joint Hospital District) Bill.
Read First Time. [1st December.

Ministry of Health Provisional Order (Taunton and District Joint Hospital District) Bill.
Read First Time. [1st December.

Solicitors Bill.
Read First Time. [7th December.

Wheat Act (1932) Amendment Bill.
Read Second Time. [2nd December.

Questions to Ministers.

KING'S BENCH DIVISION.

Mr. LINDSAY asked the Attorney-General the number of cases (excluding appeals to the divisional court) awaiting trial in the King's Bench Division at the beginning of the Michaelmas terms, 1931 and 1932, and at the latest convenient date, respectively?

THE ATTORNEY-GENERAL: The figures for which the hon. Member asks are 1,291 at Michaelmas, 1931; 1,212 at Michaelmas, 1932; and 991 on the 4th December, 1932. [6th December.

DIVORCE LAWS (DESERTED WIVES).

Mr. A. SOMERVILLE (for Sir COOPER RAWSON) asked the Attorney-General if he has considered the case of many women in this country who married soldiers from the Dominions during the War but have been deserted by their husbands for over fourteen years and are now left with children and no means; and will he consider some amendment of the divorce laws to enable these women to secure their freedom without incurring the expense of instituting proceedings in the Dominions instead of at home?

THE SOLICITOR-GENERAL (Sir Boyd Merriman): It is not possible to state within the limits of an answer to a question the many difficulties in the way of legislation of the kind suggested. It would involve, among other things, an alteration of the law of this country so as to make desertion alone a ground for divorce. It would also involve legislation, similar to that which was in force for a short period after the War, conferring a separate domicile upon the wife for the purpose of divorce proceedings; and even if this alteration was made, a divorce granted to a wife would not be recognised in the Dominion concerned without reciprocal legislation. The situation is to some extent met by the Maintenance Orders (Facilities for Enforcement) Act, 1920. The reciprocal legislation which most of the Dominions have passed in relation to this Act enables a deserted wife to enforce a maintenance order against her husband in those Dominions. [7th December.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointment of Mr. EDWARD BENNET (I.C.S.) as a Puisne Judge of the High Court of Judicature at Allahabad.

The Lord Chancellor has appointed Mr. EDWIN MAX KONSTAM, C.B.E., K.C., to be a Judge of County Courts, and has made the following arrangements in connection with the vacancy caused by the decease of His Honour Judge Turner:—

His Honour Judge Dumas to sit as additional Judge at Westminster County Court, and to be the Judge of Uxbridge County Court (Circuit 34).

His Honour Judge Konstam, C.B.E., K.C., to sit as additional Judge at Bow, Clerkenwell, and Shoreditch County Courts, and to be the Judge of Bromley, Dartford, East Grinstead, Gravesend, Sevenoaks, Tonbridge, Tunbridge Wells and Waltham Abbey County Courts (Circuit 56).

The Minister of Health, The Right Hon. Sir Hilton Young, G.B.E., D.S.O., D.S.C., M.P., has appointed Mr. J. M. K. HAWTON to be his Assistant Private Secretary.

The Acting Deputy Secretary to the Ministry of Health, Sir Arthur Lowry, C.B., has appointed Mr. W. H. HOWES to be his Private Secretary.

Mr. SIDNEY HERBERT CLAY, solicitor, has been appointed a Magistrate for the County of Nottinghamshire. Mr. Clay was admitted in 1894, and practises in Worksop, Sheffield and Retford.

Mr. T. W. W. GOODERIDGE, Chief Legal Assistant to the Clerk of the Hertfordshire County Council, has been appointed to a similar office under the Surrey County Council. Mr. Gooderidge was admitted a solicitor in 1910.

Mr. R. M. BARLOW, solicitor, of Bury, has been selected for appointment as Coroner for the Bury district, in succession to the late Mr. S. F. Butcher. Mr. Barlow was admitted in 1921.

Mr. ERROLL MACDOUGALL, K.C., Montreal, has been appointed a Judge of the Superior Court of Quebec.

The Board of Delegates of the Hearts of Oak Benefit Society have elected Mr. T. S. NEWMAN as their new Secretary. Mr. Newman, a barrister, has for the past thirteen years been second assistant secretary.

Mr. GEOFFREY KNOWLES, M.C., LL.B., Clerk and Solicitor to the Urban District Council of Weston-Super-Mare, has been appointed Deputy Town Clerk of Bristol. Mr. Knowles was admitted a solicitor in 1911.

Professional Announcements.

(2s. per line.)

POLAK, HENRY SALOMON LEON, of the firm of HY. S. L. POLAK & Co., of Danes Inn House, 265, Strand, London, W.C.2, has been appointed as from the 16th August, 1932, London Solicitor to the Government of Malta.

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

RENEWAL OF PRACTISING CERTIFICATES.

We would again remind our readers that Thursday, 15th December, is the last day for renewing Solicitors' Practising Certificates for 1932–33. All certificates on which the duty is paid after 1st January next must be left with The Law Society for entry, and the names of solicitors taking out their certificates after that date cannot be included in "The Law List" for 1933.

CHARTERED INSTITUTE OF SECRETARIES.

Mr. Frederick Gurdon Palin, secretary of the British Metal Corporation, Limited, has been elected president of the Chartered Institute of Secretaries, in succession to Mr. F. R. E. Davis. Mr. W. G. Hislop, London Secretary of Rand Mines, Limited, and Mr. Hildred Carlisle, Secretary of the Investment Trust Corporation, Limited, have been elected vice-presidents; Mr. Howard Foulds, Secretary of Callender's Cable and Construction Company, Limited, has been elected treasurer.

LAW OF THE DOG.

A man summoned at the Thames Police Court last week for keeping a dog without a licence said that the animal was only five months old, and that he did not think that a collar was necessary. The Magistrate (Mr. F. T. Barrington-Ward, K.C.)—I shall have to teach you a little law at your own expense—under six months no licence; from a day a collar. Pay 2s. 6d. for that.

FEWER LONG FIRM FRAUDS.

Judge Whiteley at the Old Bailey recently said he was glad to hear that the number of cases of long firm frauds had decreased. He thought the reason must be that they were dealt with severely in that court.

THE BOROUGH OF WOLVERHAMPTON.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton, will be held at the Sessions Court, Town Hall, North-street, Wolverhampton, on Friday, the 6th day of January, 1933, at 10 o'clock in the forenoon.

AWARDS AT GRAY'S INN.

Gray's Inn announces that an entrance scholarship (£100 a year for three years) has been awarded to Mr. John Humphrey Carlile Morris, of Charterhouse and Christ Church, Oxford, a student of the society; and a Lord Justice Holker junior scholarship (£100 a year for three years) to Mr. Weatherley St. John Creswell Tayleur, of Rossall and Queen's College, Oxford, also a student of the Society.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I Mr. JUSTICE EVE. Non-Witness	Mr. JUSTICE MAUGHAM. Witness. Part II.
M'nd'y Dec. 12	Mr. Blaker	Mr. Andrews	Mr. Hicks Beach	Mr.*Blaker
Tuesday .. 13	More	Jones	Blaker	Jones
Wednesday 14	Hicks Beach	Ritchie	Jones	*Hicks Beach
Thursday . 15	Andrews	Blaker	Hicks Beach	Blaker
Friday 16	Jones	More	Blaker	*Jones
Saturday .. 17	Ritchie	Hicks Beach	Jones	Hicks Beach

DATE.	GROUP I. Mr. JUSTICE BENNETT. Witness Part I.	Mr. JUSTICE CLAUSON. Witness Part II.	GROUP II. Mr. JUSTICE LUXMOORE. Witness Part I.	Mr. JUSTICE FARWELL. Non-Witness.
M'nd'y Dec. 12	Mr.*Jones	Mr. Andrews	Mr.*More	Mr. Ritchie
Tuesday .. 13	*Hicks Beach	*More	*Ritchie	Andrews
Wednesday 14	*Blaker	Ritchie	*Andrew	More
Thursday . 15	*Jones	*Andrews	More	Ritchie
Friday 16	Hicks Beach	More	*Ritchie	Andrews
Saturday .. 17	Blaker	Ritchie	Andrews	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 22nd December, 1932.

	Middle Price 7 Dec. 1932.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	107	3 14 9	3 11 2
Consols 2½%	73½xd	3 8 0	—
War Loan 3½% 1952 or after	98	3 11 5	—
Funding 4% Loan 1960-90	108	3 14 1	3 10 8
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	107	3 14 9	3 12 4
Conversion 5% Loan 1944-64	114	4 7 9	3 9 0
Conversion 4½% Loan 1940-44	108	4 3 4	3 5 5
Conversion 3½% Loan 1961 or after	98½	3 11 1	—
Local Loans 3% Stock 1912 or after	86xd	3 9 9	—
Bank Stock	320	3 15 0	—
India 4½% 1950-55	105	4 5 9	4 1 9
India 3½% 1931 or after	83½xd	4 3 10	—
India 3% 1948 or after	72½xd	4 2 9	—
Sudan 4½% 1939-73	107	4 4 1	3 3 10
Sudan 4% 1974 Redeemable in part after 1950	107	3 14 9	3 9 6
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100	3 0 0	3 0 0
Colonial Securities.			
*Canada 3% 1938	100xd	3 0 0	3 0 0
*Cape of Good Hope 4% 1916-36	102	3 18 5	—
Cape of Good Hope 3½% 1929-49	97xd	3 12 2	3 14 10
††Ceylon 5% 1960-70	117	4 5 6	3 19 4
*Commonwealth of Australia 5% 1945-75	102½xd	4 17 7	4 14 9
Gold Coast 4½% 1956	106xd	4 4 11	4 1 10
*Jamaica 4½% 1941-71	104	4 6 6	3 18 10
*Natal 4% 1937	102	3 18 5	3 10 2
New South Wales 4½% 1935-45	97xd	4 12 9	4 16 4
*New South Wales 5% 1945-65	101	4 19 0	4 17 10
*New Zealand 4½% 1945	102	4 8 3	4 5 7
*New Zealand 5% 1946	105xd	4 15 3	4 9 10
Nigeria 5% 1950-60	112	4 9 3	4 0 2
*Queensland 5% 1940-60	101	4 19 0	4 16 9
*South Africa 5% 1945-75	108xd	4 12 7	4 3 8
*South Australia 5% 1945-75	101xd	4 19 0	4 17 9
*Tasmania 5% 1945-75	103	4 17 1	4 13 9
*Victoria 5% 1945-75	102xd	4 18 0	4 15 9
*West Australia 5% 1945-75	103	4 17 1	4 13 9
Corporation Stocks.			
Birmingham 3% 1947 or after	83½xd	3 11 10	—
*Birmingham 5% 1946-56	113	4 8 6	3 15 8
*Cardiff 5% 1945-65	110	4 10 11	4 0 0
Croydon 3% 1940-60	93	3 4 6	3 8 0
*Hastings 5% 1947-67	112	4 9 3	3 17 6
Hull 3½% 1925-55	97½	3 11 10	3 13 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	96½xd	3 12 6	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	73	3 8 6	—
London County 3% Consolidated Stock after 1920 at option of Corporation	85	3 10 7	—
Manchester 3% 1941 or after	84½	3 11 0	—
Metropolitan Water Board 3% "A" 1963-2003	87	3 9 0	3 10 0
Do. do. 3% "B" 1934-2003	88	3 8 2	3 9 1
*Middlesex C.C. 3½% 1927-47	99	3 10 8	3 11 10
Do. do. 4½% 1950-70	109½	4 2 2	3 15 3
Nottingham 3% Irredeemable	83⅛	3 11 10	—
*Stockton 5% 1946-66	111½	4 9 8	3 18 5
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	99½	4 0 5	—
Gt. Western Rly. 5% Rent Charge	113	4 8 6	—
Gt. Western Rly. 5% Preference	72½	6 18 0	—
L. Mid. & Scot. Rly. 4% Debenture	91½	4 7 5	—
L. Mid. & Scot. Rly. 4% Guaranteed	74½	5 7 5	—
Southern Rly. 4% Debenture	96½	4 2 11	—
Southern Rly. 5% Guaranteed	101½	4 18 6	—
Southern Rly. 5% Preference	66½	7 10 4	—
‡L. & N.E. Rly. 4% Debenture	81½	4 18 2	—
‡L. & N.E. Rly. 4% 1st Guaranteed	60½	6 12 3	—

*Not available to Trustees over par. ††Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.
‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.

MORTGAGES.

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LEGAL TUITION.

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BOLTON.—Will Mrs. ISABELLA BOLTON, nee CLAY, who married Dr. John Henry Douglas Bolton, of Mauritius, in 1900, or anyone knowing or having information leading to her present whereabouts please communicate with Griffith & Son, of 3, New-square, Lincoln's Inn, W.C.2?

CALEB ROBERT STANLEY, 1790-1868, artist. —INFORMATION is DESIRED of any DESCENDANTS and RELATIVES of Caleb Robert Stanley, who was residing at No. 27, Great Maddox-street, London, W., at the time of his death on the 17th February, 1868, or of the descendants and relatives of any of his Brothers and Sisters.—Any person able to give any such information is invited to COMMUNICATE with Rochester Pusey & Co., 90, Cannon-street, London, E.C.4, Solicitors.

BREWSTER.—The KIN of MAUD MARY BREWSTER, spinster, late of 40, Great Peter-street, Westminster, Middlesex, who died at St. Stephen's Hospital, 369, Fulham-road, Fulham, Middlesex, on 17th March, 1931, are requested to APPLY to The Treasury Solicitor (B.V.), Storeys-gate, London, S.W.1. (Estate about £800.)

DELAUNE.—The KIN of MARIE LOUISE DELAUNE, widow, late of 53, Rue Vivienne, Paris, who died there on 11th November, 1930, are requested to APPLY to The Treasury Solicitor (B.V.), Storeys-gate, London, S.W.1. (Estate about £1,500.)

BOOKS AND PERIODICALS.

WANTED in good condition, second-hand set of "Encyclopædia of Forms and Precedents." Please state particulars and price to Box 3001, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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NEEDS HELP.

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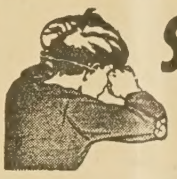
Phone: Hop 4740.

Treasurer: F. P. WHITBREAD.

Bankers: THE BANK OF ENGLAND.



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